

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS DIVISION

UNITED STATES OF AMERICA and	)	
STATE OF ILLINOIS,	)	
	)	
Co-Plaintiffs,	)	
	)	
v.	)	No. 3:18-cv-01484
	)	
	)	
WRB REFINING LP and	)	
PHILLIPS 66 COMPANY,	)	
	)	
Defendants.	)	
_____	)	

**CONSENT DECREE**

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**APPENDICES**

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

Appendix A: Flaring Minimization and Efficiency including the following Appendices to Appendix A:

<b>NUMBER</b>	<b>ABBREVIATION</b>	<b>DESCRIPTION</b>
A1.1	S-Drwgs	Drawings Illustrating Lower, Center, and Upper Steam Injection in Various Types of Flare Tips
A1.2	N/A	Intentionally Left Blank
A1.3	N/A	Intentionally Left Blank
A1.4	N/A	Intentionally Left Blank
A1.5	N/A	Intentionally Left Blank
A1.6	N/A	Intentionally Left Blank
A1.7	G-Drwg	Depiction of Gases Associated with Steam-Assisted Flares
A1.8	Flr-Data-Rpt	Outline of Requirements for the Flare Data and Initial Monitoring Systems Report
A1.9	N/A	Intentionally Left Blank
A1.10	N/A	Intentionally Left Blank
A1.11	WG-Map	Waste Gas Mapping: Level of Detail Needed to Show Main Headers and Process Unit Headers
A1.12	N/A	Intentionally Left Blank
A1.13	Stips-Calc	Calculating the Amount of Stipulated Penalties Due for Violating Limitations on Flaring when the Stipulated Penalties are Based on Excess VOC and SO <sub>2</sub> Emitted
A1.14	Nlsn-Cmplxty	Equations and Methodology to Calculate Refinery-Specific Complexity and Industry-Average Complexity using Nelson Complexity Index
A2.1	FLR-Limit-Calc	Methodology for Calculating the Wood River Refinery Flaring Limitation

Appendix B: Lead Hazard Reduction Supplemental Environmental Project

Appendix C: Map of Fence Line Monitoring Locations

Appendix D: June 30, 2014 and September 29, 2014 NOVs/FOVs

**CONSENT DECREE**

WHEREAS Plaintiff the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and Co-Plaintiff the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois, have filed a complaint (“Complaint”) against Defendants WRB Refining LP and Phillips 66 Company (collectively “WRB/P66” or “Defendants”), concurrently with the lodging of this Consent Decree, for alleged environmental violations at the WRB/P66 petroleum refinery located in Roxana and Hartford, Illinois (“Wood River Refinery” or “Refinery”);

WHEREAS the Wood River Refinery is owned by Defendant WRB Refining LP;

WHEREAS the Wood River Refinery is currently operated by Defendant Phillips 66 Company and prior to May 1, 2012, was operated by ConocoPhillips Company, a predecessor in interest of Phillips 66 Company;

WHEREAS the Complaint alleges that WRB/P66 violated the following requirements and obligations:

- a. The Prevention of Significant Deterioration (“PSD”) requirements contained in Part C of Title I of the CAA, 42 U.S.C. § 7470-7492, and the regulations promulgated thereunder at 40 C.F.R. § 52.21, with respect to the Refinery’s flares;
- b. The Non-Attainment New Source Review requirements contained in Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, and the regulations promulgated thereunder at 40 C.F.R. § 51.165, Part 51, Appendix S, and § 52.24, with respect to the Refinery’s flares;
- c. The New Source Performance Standards (“NSPS”) promulgated at 40 C.F.R. Part 60, Subparts A, J, Ja, VV, VVa, GGG, and GGGa, pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, with respect to the Refinery’s flares and equipment in volatile organic compound service;
- d. The National Emission Standards for Hazardous Air Pollutants for Benzene Waste Operations promulgated at 40 C.F.R. Part 61, Subpart FF (“BWON”), pursuant to Section 112 of the CAA, 42 U.S.C. § 7412;

- e. The NESHAPs for Source Categories promulgated at 40 C.F.R. Part 63, Subparts A, G, CC, and UUU, pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, with respect to the Refinery's flares;
- f. The requirements of Title V of the CAA found at 42 U.S.C. §§ 7661a(a), 7661b(c), 7661c(a), and the regulations promulgated thereunder at 40 C.F.R. §§ 70.1(b), 70.5(a) and (b), 70.6(a) and (c), and 70.7(b);
- g. The portions of the Title V permit for the Wood River Refinery that adopt, incorporate, or implement the provisions cited in Paragraphs a–e and h;
- h. The federally enforceable Illinois State Implementation Plan (“SIP”): (i) to the extent that it adopts, incorporates, and/or implements the federal requirements set forth in Subparagraphs a and b; and (ii) at 35 Ill. Adm. Code 219.301 and 219.302;
- i. The requirements set forth in Subparagraphs c–e that Illinois is delegated to implement through agreements between EPA and the Illinois Environmental Protection Agency; and
- j. Upon information and belief, the emergency notification requirements of CERCLA, 42 U.S.C. § 9603(a), and EPCRA, 42 U.S.C. § 11004(b).

WHEREAS on June 30, 2014, and September 29, 2014, EPA issued Notices and Findings of Violation (“2014 NOV/FOVs”) to WRB/P66 asserting that the Wood River Refinery failed to comply with: (i) the Clean Air Act (“CAA”), 42 U.S.C. § 7401 *et seq.*, and corresponding federal regulations; (ii) the federally enforceable Illinois State Implementation Plan (“Illinois SIP”) provisions that incorporate, adopt, and/or implement federal requirements; and (iii) federal regulations that are implemented in Illinois through delegation agreements between EPA and the Illinois Environmental Protection Agency (“Illinois EPA”);

WHEREAS the United States, the State of Illinois, and WRB/P66 are among the parties to a Consent Decree entered by the United States District Court for the Southern District of Texas in Civ. Act. No. H-05-258, on December 5, 2005, as modified or amended on May 1, 2007, September 27, 2007, August 11, 2008, April 13, 2012, June 1, 2012, and September 21,

2012 (the “2005 Consent Decree”), which covers eleven refineries that, at that time, all were owned and operated by ConocoPhillips Company, a predecessor in interest of the Phillips 66 Company, including the Wood River Refinery;

WHEREAS the United States and Illinois allege that WRB/P66 has violated certain provisions of the 2005 Consent Decree that relate to the Wood River Refinery;

WHEREAS the United States and Illinois are not seeking any relief against ConocoPhillips Company for the claims in the Complaint or in the 2014 NOV/FOVs or for the alleged violations of the 2005 Consent Decree because in 2012 Phillips 66 Company assumed all liability for ConocoPhillips relating to the Wood River Refinery, including liability under the 2005 Consent Decree;

WHEREAS WRB/P66 neither admits nor denies that it has violated and/or continues to violate the 2005 Consent Decree or any federal or state statutory or regulatory requirements;

WHEREAS EPA reviewed extensive information and data submitted by WRB/P66 regarding its compliance with the Wood River Refinery obligations in the 2005 Consent Decree and determined that, with respect to the Wood River Refinery, WRB/P66 has satisfactorily complied with and completed the requirements for termination set forth in Paragraph 443 of the 2005 Consent Decree except for the following:

- a. The payment of certain stipulated penalties for alleged non-compliance with the 2005 Consent Decree at the Wood River Refinery; and
- b. A potential, but not yet actual, area of non-compliance with a requirement of the BWON, 40 C.F.R. Part 61, Subpart FF;

WHEREAS WBR/P66 neither admits nor denies that those two areas are outstanding with respect to the 2005 Consent Decree;

WHEREAS United States, Illinois, and WRB/P66 (the “Parties”) have agreed to resolve those two areas through the following:

- a. With respect to the stipulated penalties that are alleged to be owing, the filing of a Joint Motion in the Southern District of Texas in Civ. Act. No. H-05-258 under which WRB/P66 will pay \$515,000 in stipulated penalties to the United States and Illinois for the alleged violations;
- b. With respect to the potential, but not yet actual, area of non-compliance with a requirement of the BWON, 40 C.F.R. Part 61, Subpart FF, (1) the incorporation of the potentially-violated BWON obligation into this Consent Decree; and (2) the potential assessment of stipulated penalties under this Consent Decree if the potential non-compliance actually occurs;

WHEREAS because of the resolution of those two areas and because of the agreed-upon satisfactory compliance and completion of all other 2005 Consent Decree obligations that pertain to the Wood River Refinery, the Parties will include in the Joint Motion identified above a request for partial, conditional termination of the 2005 Consent Decree as to the Wood River Refinery that will terminate all obligations of the 2005 Consent Decree that apply to the Wood River Refinery provided that this Consent Decree is entered;

WHEREAS under this Consent Decree, WRB/P66 will pay a civil penalty of \$475,000 to the United States and Illinois and will perform a Supplemental Environmental Project at a cost of no less than \$500,000;

WHEREAS WRB/P66 estimates that, including expenditures it already has made, it will spend a total of approximately \$10.8 million to comply with the injunctive relief requirements of this Consent Decree;

WHEREAS WRB/P66 estimates that, including expenditures it already has made, it will spend a total of approximately \$200,000 for mitigation measures identified in Paragraphs 27, 29, 40–47, and 71–73;



WHEREAS EPA anticipates that the relief in this Consent Decree will reduce emissions of the following pollutants by the following amounts, in tons per year (“tpy”):

Nitrogen Oxides (“NO <sub>x</sub> ”)	23
Volatile Organic Compounds (“VOCs”)	270
Carbon Monoxide (“CO”)	150

WHEREAS EPA also anticipates reductions in benzene emissions;

WHEREAS WRB/P66 has indicated that it remains committed to proactively addressing environmental issues relating to its operations;

WHEREAS discussions between the United States, Illinois, and WRB/P66 (“the Parties”) have resulted in the settlement embodied in the Consent Decree;

WHEREAS WRB/P66 has waived any applicable federal or state requirements of statutory notice of the alleged violations;

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

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; Sections 113(b) and 167 of the CAA, 42 U.S.C. §§ 7413(b) and 7477; and over the Parties. Venue lies in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because WRB/P66

is located in this judicial district and the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, WRB/P66 consents to this Court's jurisdiction over this Decree, over any action to enforce this Decree, and over WRB/P66. WRB/P66 also consents to venue in this judicial district.

2. For purposes of this Consent Decree, WRB/P66 does not contest that the Complaint states claims upon which relief may be granted.

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

## **II. APPLICABILITY AND BINDING EFFECT**

4. The obligations of this Consent Decree apply to and are binding upon the United States, Illinois, and upon WRB/P66 and any successors, assigns, and other entities or persons otherwise bound by law. The obligations of this Consent Decree relating to WRB/P66 apply to the Wood River Refinery and no other refinery owned or operated by WRB/P66.

5. Effective from the Date of Lodging of this Consent Decree, WRB/P66 shall give written notice, and shall provide a copy, of this Consent Decree to any successors in interest at least sixty days prior to the transfer of ownership or operation of any portion of the Wood River Refinery. WRB/P66 shall notify the United States and Illinois in accordance with the notice provisions set forth in Section XVI (Notices), of any successor in interest at least thirty days prior to any such transfer.

6. If WRB/P66 seeks to be relieved of any of the obligations of this Consent Decree, WRB/P66 shall submit a request to the United States and Illinois seeking their agreement to a

transferee's assumption of any such obligations. In order to make that request, WRB/P66 must condition any transfer, in whole or in part, of ownership of, operation of, or other interest in (exclusive of any non-controlling, non-operational shareholder interest) the Wood River Refinery upon the transferee's written agreement to execute a modification to the Consent Decree that shall make the terms and conditions of the Consent Decree applicable to the transferee.

7. As soon as possible prior to the transfer: (i) WRB/P66 shall notify the United States and Illinois of the proposed transfer and of the specific Consent Decree provisions that WRB/P66 proposes the transferee assume; (ii) WRB/P66 shall certify that the transferee is contractually bound to assume the obligations and liabilities of this Consent Decree; and (iii) the transferee shall submit to the United States and Illinois a certification that the transferee has the financial and technical ability to assume the obligations and liabilities of this Consent Decree and a certification that the transferee is contractually bound to assume the obligations and liabilities of this Consent Decree.

8. After the submission to the United States and Illinois of the notice and certification required by the previous Paragraph, either: (i) the United States and Illinois shall notify WRB/P66 that they do not agree to modify the Consent Decree to make the transferee responsible for complying with the terms and conditions of the Consent Decree; or (ii) the United States, Illinois, WRB/P66, and the transferee shall file with the Court a joint motion requesting the Court approve a modification substituting the transferee for WRB/P66 as the Defendant responsible for complying with the terms and conditions of the Consent Decree.

9. If WRB/P66 does not get a response back from the United States or Illinois under Paragraph 8 within a reasonable period of time or the United States does not agree to the transfer,

then WRB/P66 and the transferee may file, without the agreement of the United States and/or Illinois, a motion requesting the Court to approve a modification substituting the transferee for WRB/P66 as the Defendant responsible for complying with some or all of the terms and conditions of the Consent Decree. The United States and/or Illinois may file an opposition to the motion.

10. Except as provided in Paragraphs 6–9 and Section XI (Force Majeure), WRB/P66 shall be solely responsible for ensuring that performance of the work required under this Consent Decree is undertaken in accordance with the deadlines and requirements contained in this Consent Decree (including Appendices). WRB/P66 shall provide an electronic or hard copy of this Consent Decree to its officers, the Wood River Refinery plant manager, the Wood River Refinery Manager of Health, Safety, and Environment, and all personnel in the Wood River Refinery Environmental Department. In addition, WRB/P66 shall ensure that its employees, agents, and contractors whose duties might reasonably include compliance with any provision of this Decree are made aware of this Consent Decree and aware of the specific requirements of this Consent Decree that fall within such person’s duties. WRB/P66 shall place an electronic version of the Consent Decree on its internal environmental website. WRB/P66 shall condition any contract for work required under this Consent Decree upon performance of the work in conformity with the terms of this Consent Decree. Copies of the applicable portions of this Consent Decree do not need to be supplied to firms who are retained solely to supply materials or equipment to satisfy requirements of this Consent Decree.

11. In any action to enforce this Consent Decree, WRB/P66 shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### **III. OBJECTIVES**

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

### **IV. DEFINITIONS**

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

a. “2005 Consent Decree” shall mean the civil consent decree entered in *United States, et al. v. ConocoPhillips Company*, Civil Act. No. H-05-258 (S.D. Texas) on December 5, 2005, as modified or amended on May 1, 2007, September 27, 2007, August 11, 2008, April 13, 2012, June 1, 2012, and September 21, 2012, and all modifications or amendments entered in that matter on or before the Date of Lodging of this Consent Decree.

b. “2014 NOV/FOVs” shall mean the Notice and Finding of Violation with Docket No. EPA-5-14-IL-04 (June 30, 2014) and the Finding of Violation with Docket No. EPA-5-14-IL-25 (September 29, 2014). These 2014 NOV/FOVs are attached as Appendix D to this Consent Decree.

c. “BWON Program” shall mean the injunctive relief specified in Paragraphs 51–74 of this Decree, which include measures required to come into compliance with the Benzene Waste Operations NESHAP (“BWON”), 40 C.F.R. Part 61, Subpart FF, as well as measures to mitigate the environmental harm caused by the alleged BWON noncompliance (including the “carbon canister” requirements in Paragraph 71, part of the “fence line monitoring

program” requirements in Paragraph 72, and the “New Vacuum Truck Unloading Facility” requirements in Paragraph 73).

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

e. “CEMS” or “Continuous Emissions Monitoring System” shall mean, consistent with the definition of “Continuous Monitoring System” in 40 C.F.R. § 60.2, the total equipment, required under this Consent Decree or an applicable regulation or permit, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

f. “CEMS Downtime Root Cause Analysis” shall mean an assessment conducted through a process of investigation to determine the primary cause and any contributing cause(s) of CEMS downtime.

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

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

- i. “CO” shall mean carbon monoxide.
- j. “Consent Decree” or “Decree” shall mean this Consent Decree, including any and all appendices attached to this Consent Decree, and any amendments thereto.
- k. “Covered Equipment” shall mean all pumps and valves in light liquid, heavy liquid, or gas/vapor service in all Covered Process Units.
- l. “Covered Process Unit” shall mean any process unit that is, or under the terms of this Consent Decree becomes, subject to the equipment leak provisions of 40 C.F.R. Part 60, Subpart GGGa.
- m. “Date of Entry” or “DOE” shall mean the Effective Date of this Consent Decree.
- n. “Date of Lodging” or “DOL” shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Southern District of Illinois.
- o. “Day” or “day” (that is, without an initial capitalization) shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree for the submission of material(s), where the last day would fall on a Saturday, Sunday, or federal and/or state holiday, the period shall run until the close of business of the next business day. In computing any period of time under this Consent Decree for the due date for the payment of a penalty, where the due date would fall on a Saturday, Sunday, or federal and/or state holiday, the period shall run until the close of business of the next federal business day.
- p. “DOR” shall mean Delay of Repair.

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

r. “Eligible Costs” shall mean all costs of conducting the Lead Hazard Reduction SEP in Section VII and Appendix B in compliance with rules promulgated by the Illinois Department of Public Health pursuant to 410 ILCS 45 and HUD’s “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing,” such as lead inspections, risk assessments, abatement, clearance, purchase of materials (including energy-efficient windows), and associated costs. No greater than 10 percent of the total Eligible Costs for the Lead Hazard Reduction SEP shall be used for administrative support and outreach. WRB/P66’s own personnel costs in overseeing the implementation of the Lead Hazard Reduction SEP shall not be considered Eligible Costs.

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

t. “Illinois” shall mean the State of Illinois.

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

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

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

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

y. “LDAR Program” shall mean the Leak Detection and Repair Program specified in Paragraphs 15–50 of this Decree which includes measures required to come into



compliance with 40 C.F.R. Part 60, Subpart GGGa, and applicable, corresponding state or local equipment leak requirements, as well as measures to mitigate the environmental harm caused by the alleged LDAR noncompliance at the Covered Process Units and Covered Types of Equipment (including “initial attempt at repair” in Paragraph 27, “drill and tap repairs” in Paragraph 29; and the “valve replacement program” in Paragraphs 40–47).

z. “Lead Hazard Reduction SEP” shall mean the Supplemental Environmental Project described in Section VII and Appendix B of this Consent Decree.

aa. “Maintenance Shutdown” shall mean a planned shutdown of a Covered Process Unit that lasts longer than 30 Days and during which the Unit is cleared of hydrocarbons.

bb. “Malfunction” shall mean, as specified in 40 C.F.R. § 60.2, “any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not Malfunctions.”

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

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

ee. “Parties” shall mean the United States, Illinois, and WRB/P66.

ff. “Refinery” or “Wood River Refinery” shall mean the refinery owned by WRB Refining LP and operated by Phillips 66 Company in Roxana, and Hartford, Illinois, which is subject to the requirements of this Consent Decree.

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

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

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

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

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

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

## V. INJUNCTIVE RELIEF

### A. Flaring Emissions Reductions and Controls

14. Emission Reductions from Flares and Control of Flaring Events. WRB/P66 shall implement and comply with Appendix A (Flaring Minimization and Efficiency) of this Consent Decree by the dates specified therein to control and minimize emissions from flaring devices at the Wood River Refinery.

### B. VOC Emission Reductions and Controls through Leak Detection and Repair

15. NSPS Applicability. Upon the Effective Date, each “process unit” (as defined by 40 C.F.R. § 60.590a(e)) at the Wood River Refinery shall be an “affected facility” for purposes of 40 C.F.R. Part 60, Subpart GGGa, and shall be subject to and comply with the requirements of Subpart GGGa as of the Effective Date, except as specifically provided in this Paragraph.

a. Unless otherwise subject to 40 C.F.R. Part 60, Subpart GGGa, the requirements of 40 C.F.R. Part 60, Subpart GGGa shall not apply to compressors at the Wood River Refinery solely based on this Paragraph.

b. Process units on which construction commenced prior to January 4, 1983, shall not be subject to the requirements in 40 C.F.R. § 60.482-7a(h)(2)(ii) regarding difficult-to-monitor valves.

c. Entry of this Consent Decree satisfies the following notification and testing requirements that are triggered by initial applicability of 40 C.F.R. Part 60, Subparts A and GGGa: 40 C.F.R. §§ 60.7, 60.8, 60.18, 60.482-1a(a) and 60.487a(e).

d. On April 10, 2012, WRB/P66 notified EPA that as of February 1, 2012, all components at the Wood River Refinery were in compliance with the monitoring requirements of 40 C.F.R. Part 60, Subpart GGGa for all “process units” (as defined by 40 C.F.R. § 60.590a(e)) at the Wood River Refinery. Since the Wood River Refinery is already subject to 40 C.F.R. Part 60, Subpart GGGa, the requirement to conduct monitoring of those components for two consecutive months following the initial applicability of 40 C.F.R. Part 60, Subpart GGGa is recognized as having been satisfied prior to the Lodging of this Consent Decree.

16. Leak Detection and Repair Program: General. WRB/P66 shall implement and comply with the requirements set forth in Paragraphs 18–50 by the dates specified therein. The requirements of Paragraphs 18–50 are in addition to the applicable requirements under 40 C.F.R. Part 60, Subpart GGGa; 40 C.F.R. Part 61, Subparts J and V; and 40 C.F.R. Part 63, Subpart CC. The terms “in light liquid service” and “in gas/vapor service” shall have the definitions set forth in the applicable provisions of 40 C.F.R. Part 60, Subpart GGGa and 40 C.F.R. Part 63, Subpart CC.

17. Definition of “Equipment.” For purposes of Paragraphs 18–50, “Equipment” shall mean any equipment as defined in 40 C.F.R. § 60.591a.

18. Applicability. The requirements of Paragraphs 18–50 shall apply to all Covered Equipment. In addition, the requirements of Paragraphs 19, 33, 35.a, 35.b, and 48 of this Consent Decree shall also apply to all Equipment at the Wood River Refinery that is regulated under any federal, state, or local LDAR program. The requirements of Paragraphs 18–50 are in addition to, and not in lieu of, the requirements of any federal, state or local LDAR regulation that may be applicable to a piece of Covered Equipment. If there is a conflict between a federal, state or local LDAR regulation and Paragraphs 18–50, WRB/P66 shall follow whichever provision is more stringent.

19. Written Facility-Wide LDAR Document. By no later than 60 Days after the Effective Date, WRB/P66 shall develop a written facility-wide LDAR document that describes: (i) their facility-wide LDAR program (*e.g.*, applicability of regulations to process units and/or specific Equipment; leak definitions; monitoring frequencies); (ii) a tracking program (*e.g.*, Management of Change) that ensures that new pieces of Equipment added to the Wood River Refinery for any reason are integrated into the LDAR program and that pieces of Equipment that are taken out of service are removed from the LDAR program; (iii) the roles and responsibilities of all employee and contractor personnel assigned to LDAR functions at the Wood River Refinery; (iv) how the number of personnel dedicated to LDAR functions is sufficient to satisfy the requirements of the LDAR program; and (v) how the Wood River Refinery plans to implement Paragraphs 18–50. WRB/P66 shall review this document on an annual basis and update it as needed by no later than December 31 of each year, beginning the first December 31 which occurs at least six months after the Effective Date.

20. Monitoring Frequency. By no later than the Effective Date, for all Covered Equipment, WRB/P66 shall comply with the monitoring frequency for valves as required by 40

C.F.R. § 60.482-7a, 40 C.F.R. § 60.482-4a, 40 C.F.R. § 60.482-8a, and 40 C.F.R. § 60.482-10a, except as provided in 40 C.F.R. § 60.482-1a, and for pumps as required by 40 C.F.R. § 60.482-2a and 40 C.F.R. § 60.482-8a.

21. Monitoring Frequency: Alternative Standards for Valves – Skip Period Leak Detection and Repair. WRB/P66 may elect to comply with the skip period monitoring requirements set forth in 40 C.F.R. § 60.483-2a, if applicable.

22. Method 21 and Alternative Work Practice Monitoring.

- a. Except as provided in Subparagraph 22.b., by no later than the Effective Date, for all Covered Equipment, WRB/P66 shall comply with Method 21 in performing LDAR monitoring, using a Flame Ionization Detector (FID) attached to a data logger, or equivalent equipment, which directly electronically records the Screening Value detected at each piece of Covered Equipment, the date and time that each Screening Value is taken, and the identification numbers of the monitoring instrument and technician. WRB/P66 or its contractor shall transfer this monitoring data to an electronic database on at least a weekly basis for recordkeeping purposes. Notwithstanding the foregoing, WRB/P66 may use paper logs where necessary or more feasible (*e.g.*, small rounds, re-monitoring, or when data loggers are not available or broken). Any manually recorded monitoring data shall be transferred to the electronic database within 7 days of monitoring.
- b. Alternative Work Practice.
  - i. From the Effective Date, WRB/P66 may utilize the Alternative Work Practice as defined at 40 C.F.R. § 60.18(g) (“the AWP”) for monitoring Equipment that meets the “difficult to monitor” criteria set out at 40 C.F.R. § 60.482-7a(h)(1).
  - ii. No sooner than three (3) years from the Effective Date, WRB/P66 may submit a request for review and approval of an AWP for LDAR monitoring of all Covered Equipment. Such request shall include a protocol that, at a minimum, addresses the following operational criteria:
    - (A) calibration procedures;
    - (B) startup (*i.e.*, warming-up the Optical Gas Imaging (“OGI”) Instrument)/shutdown procedures;

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

If such request is approved by EPA, WRB/P66 may utilize the AWP for monitoring all Covered Equipment.

23. Monitoring Equipment Calibration. By no later than the Effective Date, WRB/P66 shall conduct all calibrations of LDAR monitoring equipment as required by Subpart GGGa in accordance with 40 C.F.R. Part 60, EPA Reference Test Method 21, as modified by 40 C.F.R. § 60.485a(b)(2), prior to both: (i) each time LDAR monitoring equipment is placed into service before each monitoring shift; and (ii) is restarted during a monitoring shift, except as provided below. WRB/P66 shall conduct calibration drift assessment rechecks of the LDAR monitoring equipment at the end of each monitoring shift and prior to each time LDAR monitoring equipment is turned off during each monitoring shift, except when LDAR monitoring equipment is unable to function such that the calibration drift assessment recheck cannot be performed before the LDAR monitoring equipment turns off. WRB/P66 is not required to conduct a calibration drift assessment re-check during the same monitoring shift in the event of a “flame-out” of the instrument if the instrument can be immediately re-ignited. For purposes of this Paragraph, the term “immediately” means within 10 minutes. If any LDAR monitoring

equipment is unable to be immediately re-ignited following “flame out,” the LDAR monitoring equipment must be allowed to warm up for a period of no less than 30 minutes prior to resuming Method 21 monitoring. The calibration drift assessment shall be conducted using calibration gas as provided in 40 C.F.R. § 60.485a(b)(1) with a concentration approximately equal to the applicable leak definition as referenced in Paragraph 25. If any calibration drift assessment after the initial calibration shows a negative drift of more than 10% from the previous calibration, WRB/P66 shall re-monitor all components that had a reading greater than 250 ppm. WRB/P66 shall retain all calibration records for at least one year, or as otherwise required by any federal state or local law, whichever provides the longest retention requirement.

24. Leak Detection. By no later than the Effective Date, to the extent required by 40 C.F.R. Part 60, Subpart GGGa, WRB/P66 shall identify leaks through Method 21 monitoring (or the AWP pursuant to Subparagraph 22.b.), and audio, visual, and olfactory sensing inspections.

25. Leak Definitions and Repairs for Valves and Pumps.

- a. By no later than the Effective Date, for each leak detected at or above the leak definition for valves defined at 40 C.F.R. § 60.482-7a(b), WRB/P66 shall perform repairs in accordance with Paragraphs 27–31 of this Consent Decree.
- b. By no later than the Effective Date, for each leak detected at or above the leak definition for pumps defined at 40 C.F.R. § 60.482-2a(b)(1)(ii), WRB/P66 shall perform repairs in accordance with Paragraphs 27–31 of this Consent Decree.

26. Leaks Detected Through Audio, Visual, or Olfactory Sensing. By no later than the Effective Date, for all Covered Equipment, at any time, including outside of periodic monitoring, that a leak is detected through audio, visual, or olfactory sensing, WRB/P66 must conduct Method 21 monitoring for the piece of Covered Equipment within 5 days and make

repairs as necessary in accordance with 40 C.F.R. Part 60, Subpart GGGa, and with Paragraphs 27–31 and of this Consent Decree based on the Method 21 monitoring result.

27. Initial Attempt at Repairs of Valves. By no later than the Effective Date, WRB/P66 shall make an “initial attempt” at repair on any valve that has a screening value greater than 200 ppm and less than 499 ppm of VOCs, excluding control valves and other valves that LDAR personnel are not authorized to repair.

28. First and Final Attempts at Repair. For each leak subject to Paragraph 25 of this Consent Decree, by no later than five (5) Days after detecting a leak, WRB/P66 shall perform a first attempt at repair. By no later than fifteen (15) Days after detection, WRB/P66 shall perform a final attempt at repair or may place the valve or pump covered by Paragraph 25 on the Delay of Repair list provided that WRB/P66 has complied with 40 C.F.R. Part 60, Subpart GGGa and with the requirements of Paragraphs 29, 30, and 32 of this Consent Decree.

29. Drill-and-Tap Repairs. By no later than the Effective Date:

- a. Except as provided in Subparagraph 29.b., for leaking valves (other than control valves), when other repair attempts have failed to reduce emissions below the applicable leak definition and WRB/P66 is not able to remove the leaking valve from service, WRB/P66 shall attempt at least one drill-and-tap repair (with a second injection of sealant if the first injection is unsuccessful at repairing the leak) before placing the valve on the DOR list.
- b. Drill-and-tap is not required when there is a major safety, mechanical, product quality, or environmental issue with repairing the valve using the drill-and-tap method, in which case WRB/P66 shall document, in the report due under Paragraph 50, the reason(s) why any drill-and-tap attempt was not performed prior to placing any valve on the DOR list.

30. Recording of Leak Information. By no later than the Effective Date, for each leak, WRB/P66 shall record the following information: the date of all repair attempts; the repair methods used during each repair attempt; the date, time and Screening Values for all re-



monitoring events; and, if relevant, the information required under Paragraph 29 and 32 of this Consent Decree for Covered Equipment placed on the DOR list.

31. Taking Covered Equipment Out of Service. Nothing in Paragraphs 27–30 of this Consent Decree is intended to prevent WRB/P66 from taking a leaking piece of Covered Equipment out of service; provided however, that prior to placing the leaking piece of Covered Equipment back in service, WRB/P66 must either repair the leak or comply with the requirements of Paragraph 32 of this Consent Decree (Delay of Repair) to place the piece of Covered Equipment on the DOR list.

32. Delay of Repair. By no later than the Effective Date, for all Covered Equipment placed on the DOR list, WRB/P66 shall require the following:

- a. Sign-off from any of the following individuals that the piece of Covered Equipment is technically infeasible to repair without a process unit shutdown: the Refinery Manager, a person responsible for environmental management and compliance at Wood River Refinery, a person responsible for process engineering for the affected process unit, an Operations Manager/Director, Production Leader, or unit supervisor;
- b. Periodic monitoring, at the frequency required for other pieces of Covered Equipment of that type in the process unit, of the Covered Equipment placed on the DOR list;
- c. No more than 0.10% of all valves may be on the DOR list at any one time. If WRB/P66 commits to repack a valve with Certified Low-Leaking Valve Packing Technology or commits to replace a valve with a Certified Low-Leaking Valve at the next Maintenance Shutdown, such valve shall not be included in computing the applicable percentage limitation of valves that may be on the DOR list at any one time; and
- d. Covered Equipment may be removed from the DOR list if it is monitored at the frequency required for other pieces of Covered Equipment of that type in the process unit for two successive monitoring periods without detecting a leak greater than the Leak Definition as set forth in 40 C.F.R. Part 60, Subpart GGGa for that type of Covered Equipment.

33. Management of Change. By no later than the Effective Date, for each Management of Change process or analysis, WRB/P66 shall ensure that each piece of Equipment added to the Wood River Refinery or removed from the Wood River Refinery for any reason is evaluated to determine if it is or was subject to LDAR requirements and that such pieces of Equipment are integrated into or removed from the LDAR program.

34. Training. By no later than 6 months after the Effective Date, WRB/P66 shall have ensured that employees and contractors responsible for LDAR monitoring, maintenance of LDAR monitoring equipment, LDAR repairs, and/or any other duties generated by the LDAR program have completed training on all aspects of LDAR that are relevant to the person's duties. By that same time, WRB/P66 shall develop a training protocol to ensure that refresher training is performed once per calendar year and that new personnel are sufficiently trained prior to any involvement in the LDAR program.

35. Quality Assurance ("QA")/Quality Control ("QC"). Commencing by no later than the first full calendar quarter after the Effective Date, during each calendar quarter, at unannounced times, an LDAR-trained employee or contractor of WRB/P66, who does not serve as an LDAR monitoring technician on a routine basis, shall undertake the following:

- a. Review Management of Change documentation for the previous calendar quarter and conduct process unit walk-throughs to determine whether all pieces of Equipment identified in the previous calendar quarter's Management of Change documentation as being subject to the LDAR program are included in the LDAR database and are properly tagged;
- b. During the process unit walk-throughs required by Subparagraph 35.a., and during such additional walk-throughs as may be necessary to assure that all Covered Process Units are reviewed at least once per year, conduct spot checks of Equipment to verify that the Equipment checked is included in the LDAR database and is properly tagged;
- c. Review the LDAR database's electronic records to:

- i. Verify that Covered Equipment was monitored at the appropriate frequency;
  - ii. Verify that proper documentation and sign-offs have been recorded for all Covered Equipment placed on the shutdown or DOR list;
  - iii. Ensure that repairs have been performed within the required timeframe;
  - iv. Review monitoring data and Covered Equipment counts (*e.g.*, number of pieces of Covered Equipment monitored per Day) for feasibility and unusual trends;
  - v. Verify that proper calibration records and monitoring instrument maintenance information are stored and maintained;
- d. Conduct spot checks of LDAR program records to verify that those records are maintained as required; and
  - e. Observe each LDAR monitoring technician in the field to ensure monitoring is being conducted as required.

WRB/P66 shall correct any deficiencies detected or observed as soon as practicable. WRB/P66 shall maintain a log that: (i) records the date and time that the reviews, verifications, and observations required by this Paragraph were undertaken; and (ii) describes the nature and timing of any corrective actions taken.

36. LDAR Audits: Schedule. Until termination of this Consent Decree, WRB/P66 shall ensure that an LDAR audit at the Wood River Refinery is conducted by an independent contractor with expertise in LDAR requirements to perform a third party audit for all regulatory LDAR requirements and for the LDAR provisions of this Section V.B. The LDAR audit shall be conducted every twenty-four (24) months in accordance with the following schedule: for the first LDAR audit at the Wood River Refinery, the LDAR Audit Commencement Date shall be no later than the second calendar quarter after the Effective Date. For each subsequent LDAR audit, the LDAR Audit Completion Date shall occur within the same calendar quarter that the first

LDAR Audit Completion Date occurred. To perform the third-party audit, WRB/P66 shall select a different company than its regular LDAR contractor.

37. LDAR Audits: Requirements. Each LDAR audit shall include, but not be limited to, reviewing compliance with all applicable regulations, reviewing and/or verifying the same items that are required to be reviewed and/or verified in Paragraph 35 of this Consent Decree, and performing the following activities for Covered Equipment:

- a. Calculating a Comparative Monitoring Audit Leak Percentage. Covered Equipment, excluding pumps and valves in heavy liquid service, shall be monitored to calculate a leak percentage for each Covered Process Unit that is covered in the audit, broken down by Covered Equipment type (*i.e.*, valves and pumps). The monitoring that takes place during the audit shall be called “comparative monitoring” and the leak percentages derived from the comparative monitoring shall be called the “Comparative Monitoring Audit Leak Percentage.” Until termination of this Consent Decree, WRB/P66 shall conduct a comparative monitoring audit pursuant to this Paragraph during each LDAR audit. Each Covered Process Unit at the Wood River Refinery that is not the subject of the current audit shall have a comparative monitoring audit at least once before a previously-audited Covered Process Unit is audited again.
- b. Calculating the Historic, Average Leak Percentage from Prior Periodic Monitoring Events. For the Covered Process Unit that is audited, the historic average leak percentage from prior monitoring events, broken down by Covered Equipment type (*i.e.*, valves and pumps) shall be calculated. The following number of complete monitoring periods immediately preceding the comparative monitoring audit shall be used for this purpose: valves - 2 periods; and pumps - 12 periods.
- c. Calculating the Comparative Monitoring Leak Ratio. For the Covered Process Unit that is audited, the ratio of the comparative monitoring audit leak percentage from Subparagraph 37.a. to the historic average leak percentage from Subparagraph 37.b. shall be calculated. If a calculated ratio yields an infinite result, WRB/P66 shall assume one leaking piece of Covered Equipment was found in the process unit through its routine monitoring during the 12-month period before the audit, and the ratio shall be recalculated.

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

38. When More Frequent Periodic Monitoring is Required. If a comparative monitoring audit leak percentage calculated pursuant to Subparagraph 37.a. triggers a more frequent monitoring schedule under any applicable federal, state, or local law or regulation than the frequencies listed in Paragraphs 20, 21, or 22 of this Consent Decree for the equipment type in that Covered Process Unit, WRB/P66 shall monitor the affected type of Covered Equipment at the greater frequency unless and until less frequent monitoring is again allowed under the specific federal, state, or local law or regulation. At no time may WRB/P66 monitor at intervals less frequently than those in the applicable Paragraph as between Paragraphs 20, 21, or 22 of this Consent Decree.

39. Corrective Action Plan (“CAP”).

- a. Requirements of a CAP. By no later than 30 days after each LDAR Audit Completion Date, WRB/P66 shall develop a preliminary corrective action plan (“CAP”) if the results of an LDAR audit identify any deficiencies or if the Comparative Monitoring Leak Ratio calculated pursuant to Subparagraph 37.c. is 3.0 or higher, and a Comparative Monitoring Audit Leak Percentage calculated pursuant to Paragraph 37.a. is 0.5% or higher. The CAP shall describe the actions that WRB/P66 shall take to correct the deficiencies and/or the systemic causes of a Comparative Monitoring Leak Ratio that is 3.0 or higher and a Comparative Monitoring Audit Leak Percentage of 0.5% or higher. The CAP also shall include a schedule by which those actions shall be undertaken. WRB/P66 shall complete each corrective action as expeditiously as possible with the goal of completing each action within 90 days after the LDAR Audit Completion Date. If any action is not completed or is not expected to be completed within 90 days after the LDAR Audit Completion Date, WRB/P66 shall explain the reasons in the final CAP to be submitted under Subparagraph 39.b., together with a proposed schedule for completion of the action(s) as expeditiously as practicable.
- b. Submissions of the CAP to EPA. By no later than 120 Days after the LDAR Audit Completion Date, WRB/P66 shall submit the final CAP to EPA, together with a certification of the completion of corrective action(s). For any corrective actions requiring more than 90 Days to complete, WRB/P66 shall include an explanation together with a proposed schedule for completion as expeditiously as practicable.

- c. Approval/Disapproval of All or Parts of a CAP.
  - i. Unless within 60 Days after receipt of the CAP, EPA disapproves all or part of a CAP's proposed actions and/or schedules, the CAP shall be deemed approved.
  - ii. By no later than 60 Days after receipt of WRB/P66's CAP, EPA may disapprove any or all aspects of the CAP. Each item that is not specifically disapproved shall be deemed approved. Except for good cause, EPA may not disapprove any action within the CAP that already has been completed. Within 45 days of receipt of any disapproval from EPA, WRB/P66 shall submit a revised CAP that addresses the deficiencies that EPA identified. WRB/P66 shall implement the revised CAP either pursuant to the schedule that EPA proposed, or, if EPA did not specify a schedule, as expeditiously as practicable.
  - iii. A dispute arising with respect to any aspect of a CAP shall be resolved in accordance with the dispute resolution provisions (Section XII) of this Consent Decree.

40. Valve Replacement Program. Commencing no later than the Effective Date, WRB/P66 shall implement the program set forth in Paragraphs 41–47 of this Consent Decree to replace and/or improve the emissions performance of the valves in each Covered Process Unit.

41. Valves.

- a. By no later than the Effective Date:
  - i. WRB/P66 shall implement modified purchasing procedures that evaluate the availability of valves and valve packing that meet the requirements for a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology at the time that the valves and/or valve packing is acquired.
  - ii. Except as provided in Paragraph 42, WRB/P66 shall install valve packing material that meets the requirements for Certified Low-Leaking Valve Packing Technology whenever repacking any valve in gas/vapor or light liquid VOC service in a Covered Process Unit.
- b. By no later than 90 days after the Effective Date (except as provided in Paragraph 42), WRB/P66 shall ensure that each new valve in gas/vapor or light liquid VOC service that it purchases for use in any Covered Process

Unit either is a Certified Low-Leaking Valve or is fitted with Certified Low-Leaking Valve Packing Technology. Newly installed sampling and instrumentation valves in service on piping with a diameter of 5/8 inches or less are not required to be Certified Low-Leaking Valves or to be fitted with Certified Low-Leaking Packing.

- c. By no later than 1 year after the Effective Date, WRB/P66 shall ensure that each new valve in gas/vapor or light liquid VOC service that it installs in any Covered Process Unit either is a Certified Low-Leaking Valve or is fitted with Certified Low-Leaking Valve Packing Technology.
- d. Replacing or Repacking Existing Valves that have Screening Values At or Above 2,500 ppm Followed by a Second Screening Value At or Above 2,500 ppm within 60 months. Except as provided in Paragraph 42, for each Existing Valve in each Covered Process Unit that has a Screening Value at or above 2,500 ppm during any monitoring event (excluding repair verification monitoring) and is followed by a second screening value at or above 2,500 ppm during any monitoring event (excluding repair verification monitoring) within 60 months, WRB/P66 shall replace or repack the Existing Valve with a Certified Low-Leaking Valve or with Certified Low-Leaking Valve Packing Technology. WRB/P66 shall undertake this replacement or repacking by no later than 30 days after the monitoring event that triggers the replacement or repacking requirement, unless the replacement or repacking requires a shutdown of the associated Covered Process Unit. If the replacement or repacking requires a shutdown, WRB/P66 shall undertake the replacement or repacking during the Maintenance Shutdown of the associated Covered Process Unit that follows the monitoring event that triggers the requirement to replace or repack the valve. If WRB/P66 completes the replacement or repacking within 30 days of detecting the leak, WRB/P66 shall not be required to comply with Paragraphs 27–31 of this Consent Decree. If WRB/P66 does not complete the replacement or repacking within 30 days, or if, at the time of the leak detection, WRB/P66 reasonably can anticipate that it might not be able to complete the replacement or repacking within 30 days, WRB/P66 shall comply with all applicable requirements of Paragraphs 27–31 of this Consent Decree in addition to the requirements of this Subparagraph 41.d.

42. Commercial Unavailability of a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology.

- a. WRB/P66 shall not be required to utilize a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology to replace or repack a valve if a Certified Low-Leaking Valve or Certified Low-Leaking Valve

Packing Technology is commercially unavailable based on the factors and procedures set forth in Paragraphs 43–46.

- b. Ongoing Assessment of Availability. WRB/P66 may use a prior determination of Commercial Unavailability of a valve or valve packing pursuant to this Paragraph and Paragraphs 43–46 for a subsequent Commercial Unavailability claim for the same valve or valve packing (or valve or valve packing in the same or similar service), provided that the previous determination was completed within the preceding 12-month period. After one year, WRB/P66 must conduct a new assessment of the availability of a valve or valve packing meeting Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology requirements.

43. Commercial Unavailability: Summary of Factors and Procedures to Establish Commercial Unavailability. Paragraphs 44–46 outline a process to be followed and factors to be taken into consideration to establish that a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology is not “commercially available” pursuant to Paragraph 42. Factors and procedures other than those identified in Paragraphs 44–46 may also be utilized to establish that a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology is not commercially available.

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

- (1) Valve type;
- (2) Valve service and operating conditions;
- (3) Type of refinery process equipment in which the valve is used;
- (4) Seal performance;
- (5) Service life;
- (6) Packing friction;
- (7) Temperature and pressure limitations; and



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

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

- a. WRB/P66 must contact a reasonable number of vendors of valves and valve packing technologies, taking into account the relevant factors identified above, prior to asserting a claim that Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology is not commercially available.
  - i. For purposes of this Consent Decree, a reasonable number of vendors shall mean at least three vendors of valves and three vendors of valve packing technologies;
  - ii. If fewer than three vendors of valve or valve packing technologies are contacted, the determination of whether such fewer number is reasonable for purposes of this Consent Decree shall be based on Factors (9)(a) and/or (9)(b) above, or on a demonstration that fewer than three vendors offer valves or valve packing technologies for the service and operating conditions of the valve to be replaced, in consideration of Factors (1) through (8) above, as applicable.
- b. WRB/P66 shall obtain a written representation from each vendor contacted or equivalent documentation that the valve or valve packing does not meet the specifications for a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology.
- c. WRB/P66 shall prepare a written report fully explaining the basis for each claim that a valve or valve packing is not commercially available, to

include the vendors WRB/P66 contacted and all relevant documentation and other information supporting the claim. Such report shall also identify the commercially available valve or packing technology that comes closest to meeting the requirements for a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology that is selected and installed by WRB/P66 pursuant to Paragraph 42.

46. Commercial Unavailability: EPA Review of Claim of Commercial

Unavailability. Upon discretionary review by EPA of any claim of commercial unavailability, if EPA disagrees that a valve or valve-packing technology is commercially unavailable, EPA shall notify WRB/P66 in writing, specifying the valve or valve packing EPA believes to be commercially available and the basis for its availability for the service and operating conditions of the valve. Following receipt by WRB/P66 of EPA's notice, the following shall apply:

- a. WRB/P66 is not required to retrofit any valves or valve packing for which the unavailability claim was asserted (unless otherwise required to do so pursuant to some other provision of this Consent Decree).
- b. EPA's notification shall serve as notice to WRB/P66 of EPA's intent that a future claim of commercial unavailability will not be accepted for: (a) the valve or valve packing that was the subject of the unavailability claim, or (b) a valve or valve packing in the same or similar service, taking into account the factors identified in Paragraph 44. If WRB/P66 disagrees with EPA's notification, WRB/P66 and EPA may informally discuss the basis for the claim of commercial unavailability. EPA may thereafter revise its notification, if necessary.
- c. If WRB/P66 makes a subsequent commercial unavailability claim for the same valve or valve packing (or valve or valve packing in the same or similar service) that was the subject of a prior unavailability claim which was not accepted by EPA, and such subsequent claim is also denied by EPA on the same basis as provided in EPA's prior notification, WRB/P66 shall retrofit the valve or valve packing with the commercially available valve or valve packing technology at the next Maintenance Shutdown.
- d. Any disputes concerning EPA's notification to WRB/P66 of the commercial availability of a valve or valve packing technology in a particular application pursuant to Subparagraph 46.c. shall be addressed under the dispute resolution provisions in Section XII of this Consent Decree.

47. Valve Replacement Program Recordkeeping. WRB/P66 shall secure and retain for the duration of this Consent Decree the following records from vendors/manufacturers:

- a. For Certified Low-Leaking Valves and Certified Low-Leaking Valve Packing Technology, documentation from the manufacturer that demonstrates that the valve or packing technology meets the definition of “Certified Low-Leaking Valve” and/or “Certified Low-Leaking Valve Packing Technology.”
- b. For valves or valve packing technology that cannot be replaced by a “Certified Low-Leaking Valve” and/or “Certified Low-Leaking Valve Packing Technology,” a written representation from each vendor contacted or equivalent documentation that the valve or valve packing does not meet the specifications for a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology.

48. Certification of Compliance. Within 180 Days after the initial LDAR Audit Completion Date, WRB/P66 shall submit a certification to EPA that, to the best of the certifier’s knowledge and belief after reasonable inquiry: (i) the Wood River Refinery is in compliance with all applicable LDAR regulations, except for any corrective actions not yet completed, as described in part (ii) of this Paragraph; (ii) WRB/P66 has completed all corrective actions, if applicable, or is in the process of completing all corrective actions pursuant to a CAP; and (iii) all Equipment at the Wood River Refinery that is regulated under any federal, state, or local leak detection program has been identified and included in the Wood River Refinery’s LDAR program.

49. Recordkeeping. WRB/P66 shall keep all records, including copies of all LDAR audits, to document compliance with the requirements of Paragraphs 18–50 in accordance with Section VIII (Reporting and Recordkeeping) of this Consent Decree. All monitoring data, leak repair data, training records, and audits will be retained until one year after termination, except for the calibration records (including calibration drift assessments) which will be retained for one year. Upon request by EPA, WRB/P66 shall make all such documents available to EPA

and shall provide, in their original electronic format, all LDAR monitoring data generated during the life of this Consent Decree.

50. LDAR Requirements for Compliance Status Reports. In each compliance status report due under Section VIII (Reporting and Recordkeeping) of this Consent Decree, WRB/P66 shall report the following information:

- a. The number of personnel assigned to LDAR functions at the Wood River Refinery (excluding personnel whose functions involve the non-monitoring aspects of repairing leaks) and the percentage of time each person dedicated to performing his/her LDAR functions;
- b. An identification and description of any non-compliance with the requirements of Paragraphs 18–50;
- c. An identification of any problems encountered in complying with the requirements of Paragraphs 18–50;
- d. Pursuant to Paragraph 29, the reason(s) why any drill-and-tap attempt was not performed prior to placing any valve on the DOR list;
- e. A description of any LDAR training required in accordance with Paragraph 34;
- e. Any deviations identified in the QA/QC performed under Paragraph 35, as well as any corrective actions taken thereunder;
- f. A summary of LDAR audit results for audits that were completed during the reporting period, including specifically identifying all deficiencies;
- g. The status of all actions under any CAP that was submitted pursuant to Paragraph 39 during the reporting period.
- i. Pursuant to Paragraph 41:
  - (1) Each valve that was replaced or upgraded;
  - (2) Each valve that WRB/P66 committed to repack with Certified Low-Leaking Valve Packing Technology or committed to replace with a Certified Low-Leaking Valve, but did not fulfill such repack or replacement at the applicable Maintenance Shutdown; and
- j. Pursuant to Subparagraph 45.c, the report required therein.

**C. Benzene Waste Operations NESHAP Emissions Reductions: BWON Program**

51. Compliance with the 6 BQ Option. Beginning on the Date of Lodging and continuing thereafter, WRB/P66 shall comply with the compliance option set forth at 40 C.F.R. § 61.342(e) (the “6 BQ Option”), along with all other associated requirements of the Benzene Waste Operations NESHAP (“BWON”), 40 C.F.R. Part 61, Subpart FF (“Subpart FF”), for the Wood River Refinery. WRB/P66 shall not change the compliance option of the Wood River Refinery from the 6 BQ Option to the 2 megagrams compliance option. Any change in compliance strategy not expressly prohibited by this Paragraph must be accomplished in accordance with the requirements of the BWON and this Consent Decree.

52. Control of Organic and Aqueous Benzene Wastes.

a. Definitions. For purposes of this Paragraph, the following definitions apply:

- i. “Aqueous Benzene Wastes” means a benzene-containing waste stream at the Wood River Refinery that has a flow-weighted annual average water content greater than 10 percent or that is mixed with water, or other wastes, at any time and the mixture has an annual average water content greater than 10 percent.
- ii. “Organic Benzene Wastes” means a benzene-containing waste stream at the Wood River Refinery that does not meet the definition of “Aqueous Benzene Wastes.”

b. Aqueous Benzene Wastes. For purposes of complying with the 6 BQ Option at all waste management units at the Wood River Refinery handling Aqueous Benzene Wastes, WRB/P66 shall either: (1) meet the applicable control standards of the BWON; or (2) have their uncontrolled benzene quantity count toward the 6 BQ Compliance limit. Nothing in this Paragraph shall be construed to limit the ability of WRB/P66 to treat and manage Aqueous Benzene Wastes in accordance with the requirements of 40 C.F.R. § 61.355(k)(4).

c. Organic Benzene Wastes. By no later than the Date of Entry of this Consent Decree, WRB/P66 shall ensure that waste management units at the Wood River Refinery handling Organic Benzene Waste are in compliance with all standards applicable to such waste management units under the BWON.

53. Annual TAB Report. Beginning with the calendar year 2018 Total Annual Benzene (“TAB”) report due in April 2019, and continuing thereafter, WRB/P66 shall submit its annual TAB report for the preceding calendar year as required by 40 C.F.R. § 61.357(d)(2).

54. Management of Change.

a. Annual Program. WRB/P66 shall continue to implement an annual program of reviewing process information for the Wood River Refinery, including but not limited to construction projects, to ensure that all new benzene waste streams are included in the Wood River Refinery’s waste stream inventory and TAB Report, and to ensure that all new waste management units are properly accounted for and managed in accordance with the BWON.

b. Post-Entry Review. By no later than 180 days from the Date of Entry of this Consent Decree, WRB/P66 shall implement any necessary revisions to all applicable policies, procedures, and guidance documents pertaining to management of change at the Wood River Refinery. These revisions shall require management of change reviews to consider and adequately address how actions or changes triggering review under such policies, procedures, or guidance documents affect the existence, nature, and control of benzene waste streams at the Wood River Refinery. Specifically, these revisions shall require management of change reviews to consider and address:

i. Whether a new waste stream regulated under the BWON is created and/or generated;

- ii. Whether the characteristics of an existing waste stream, including benzene concentration, waste stream flow rate, annual quantity and water content shall change; and
- iii. The actions necessary to properly account for, control, and report on any such new or modified waste streams.

55. Training.

a. By no later than the Date of Entry. The following requirements shall apply by no later than the Date of Entry of this Consent Decree:

- i. WRB/P66 shall ensure that employees and contractors at the Wood River Refinery responsible for BWON sampling, BWON monitoring, maintenance of BWON monitoring equipment, BWON repairs, and/or any other duties stemming from the BWON or the compliance requirements of this Consent Decree have completed training on all aspects of the BWON and this Consent Decree that are relevant to the person's duties. By that same time, WRB/P66 shall develop a training protocol to ensure that refresher training is performed once per calendar year and that new personnel are sufficiently trained before starting any BWON-related duties;
- ii. Establish standard operating procedures for all control equipment used to comply with the BWON and include training on such procedures as part of the annual training for employees assigned to operate this equipment.

b. Management of Change Revisions. By no later than 120 days following the date that revisions pursuant to Subparagraph 54.b. are implemented, all management of change training for employees and contractors who conduct management of change reviews and/or analyses shall include training on the revised policies, procedures, and guidance documents required by Subparagraph 54.b.

56. Benzene Spills. Beginning on the Date of Entry and continuing thereafter, for each spill at the Wood River Refinery, WRB/P66 will review such spills to determine if more than 10 pounds of benzene waste was generated in any twenty-four hour period. WRB/P66 shall

account for all benzene waste in its annual TAB calculation and report. All benzene wastes generated through spills of more than 10 pounds that are not managed solely in controlled waste management units shall count toward the 6 BQ limit.

57. Waste/Slop/Off-Spec Oil Management.

a. Slop Oil Plan. By no later than 180 days after the Date of Entry, WRB/P66 shall submit to EPA a slop oil plan, including a slop oil diagram. EPA may review the plan and recommend revisions to add uncontrolled waste streams resulting from waste/slop oil movement, in accordance with the provisions of 40 C.F.R. Part 61, Subpart FF. WRB/P66 shall maintain records of waste/slop oil movements for waste streams (organic or aqueous) that are not controlled, as identified in the slop oil plan.

b. Aqueous Benzene Waste Streams. For purposes of calculating the Refinery's TAB pursuant to the requirements of 40 C.F.R. § 61.342(a), WRB/P66 will include all waste/slop/off-spec oil streams that become "aqueous" until such streams are recycled to a process or put into a process feed tank (unless the tank is used primarily for storage of wastes). Appropriate adjustments will be made to such calculation to avoid the double-counting of benzene. For purposes of complying with the 6 BQ Option, all waste management units handling aqueous benzene waste streams will have their uncontrolled benzene quantity count toward the 6 BQ limit.

58. Laboratory Audits. WRB/P66 shall conduct audits of all laboratories that perform analyses of samples used to determine compliance with the BWON at the Wood River Refinery. These audits shall review procedures and methods in order to ensure that proper analytical and quality assurance practices are followed. WRB/P66 shall conduct such audits at each laboratory at least every two calendar years starting in 2019 or prior to using a new



laboratory for analysis of benzene samples. WRB/P66 may retain third parties to conduct these audits or use audits conducted by others as its own, but the responsibility and obligation to ensure that the Wood River Refinery complies with this Consent Decree and Subpart FF are solely WRB/P66's.

59. Point of Waste Generation Revalidation Project. By signing this Consent Decree, WRB/P66 certifies that it has completed a Point of Waste Generation ("POG") Revalidation Project in 2014 and 2015 to assure an accurate and complete POG inventory for the Wood River Refinery. This POG Revalidation Project included P&ID evaluations, field observations, operator interviews, and a detailed spreadsheet accounting for each POG. This effort also produced an updated Sampling Plan and Slop Oil Diagram which was provided to EPA on June 13, 2014. As part of this POG Revalidation Project, the Management of Change process regarding POG inventory management was validated to assure any changes to the POG inventory following the POG Revalidation Project will be integrated into each annual TAB calculation.

60. Maintenance and Use of Modifications to the Corrugated Plate Interceptor ("CPI") Sampling Port/Hatch Design. WRB/P66 shall maintain each observation hatch that it has installed on the cover plates of each of its CPIs at the Refinery by ensuring that each hatch maintains a tight-fitting seal when not in use. WRB/P66 shall use these observation hatches at all times when WRB/P66 performs routine visual observation of the CPI plates to assess and adjust oil skimmer positions within the CPI. WRB/P66 shall not open the cover plates for these routine visual observations. WRB/P66 shall open the cover plates only when necessary to perform periodic maintenance of the CPI or otherwise ensure safe operation of the CPI.

61. Vacuum Project at Dissolved Nitrogen Flotation (“DNF”) Tanks (“DNF Tanks’ Vacuum Project”). By no later than June 30, 2018, WRB/P66 shall install the instrumentation and equipment necessary to operate the two DNF Tanks at the Refinery’s wastewater treatment plant under a slight negative pressure to create a vacuum. The instrumentation and equipment shall include vapor collection header set point changes, installation and piping modifications for the nitrogen blanketing system control valve, conservation vent replacements, installation of oxygen analyzers, and controls for natural gas to maintain the BTU content in the vapor collection header. WRB/P66 shall monitor and alarm the system to enable effective operation of the DNFs under vacuum.

62. Monitoring of Equipment that Handles Benzene-Containing Waste Streams.

a. Water Traps. Beginning on the Date of Entry and continuing thereafter, WRB/P66 shall conduct monthly visual inspections of all water traps within its individual drain systems that are required to be controlled pursuant to WRB/P66’s benzene compliance strategy. The visual inspection will be designed to ensure that the water traps are operating properly.

b. Conservation Vents Subject to Subpart FF.

i. Beginning on the Date of Entry and continuing thereafter on a weekly basis, WRB/P66 shall: (1) visually inspect all Subpart FF conservation vents on process sewers for detectable leaks; (2) reset any vents where leaks are detected; and (3) record the results of the inspections. By no sooner than two years after the Date of Entry, WRB/P66 may submit a request to EPA to modify the frequency of the inspections based upon an evaluation of the recorded results.

ii. Alternative to Weekly Monitoring of Conservation Vents that have Flow Indicators. As an alternative to the weekly monitoring in Subparagraph 62.b.i., for conservation vents that have flow indicators, WRB/P66 may elect to visually inspect such indicators on a monthly basis and if flow is detected, WRB/P66 will then visually inspect that indicator on a weekly basis for four weeks. If flow is detected during any two of these four weeks, WRB/P66 will install a single or dual carbon canister on that vent and comply

with the respective canister requirements of Paragraph 71 until WRB/P66 implements appropriate corrective action to prevent any flow.

- iii. Nothing in this Paragraph will require WRB/P66 to monitor conservation vents on fixed roof tanks.

c. Groundwater Remediation Wastes. Beginning on the Date of Entry and continuing thereafter, WRB/P66 shall manage and treat all groundwater remediation wastes at the Refinery that are covered by Subpart FF in appropriate waste management units consistent with Subpart FF.

d. Other Equipment/Units Handling Benzene-Containing Waste Streams.

- i. The CPI, the DNF Tanks, Tank A149 components (excluding floating roof), and the Bar Screen Hatches. Commencing no later than 30 days after the Date of Entry and continuing thereafter, WRB/P66 shall conduct monthly monitoring of the CPI, the DNF Tanks, Tank A149 components (excluding floating roof), and the bar screens hatches at the Refinery's wastewater treatment plant using Method 21. Upon completion of the DNF Tanks' Vacuum Project required by Paragraph 61, WRB/P66 may change from monthly to quarterly monitoring for any unit monitored under this Subparagraph 62.d.i. if the unit shows no detectable emissions for three consecutive months.

- ii. Tank A149 Floating Roof. Commencing no later than 30 days after the Date of Entry, WRB/P66 shall conduct quarterly monitoring of the three pressure relief valves on the roof of Tank A149, using either Method 21 monitoring or an OGI camera. WRB/P66 shall take corrective action to address any VOC detectable emissions but shall not be required to undertake Method 21 monitoring as a follow-up to the OGI.

- (I) If no detectable emissions are found during the first eight (8) monitoring events after the Date of Entry, WRB/P66 can discontinue quarterly monitoring and commence annual monitoring as follows: With each annual secondary seal inspection conducted pursuant to 40 C.F.R. §§ 61.351 and 60.113b(b)(1)(ii), WRB/P66 shall conduct Method 21 monitoring of the three pressure relief valves on the roof of Tank A149. WRB/P66 shall take corrective action to address any VOC detectable emissions.

- (2) If WRB/P66 identifies no detectable emissions during the first eight monitoring events, then after WRB/P66 completes the eighth monitoring event, it may submit to EPA for review and approval, a proposal to monitor the three valves, using OGI and/or Method 21, less frequently than quarterly. WRB/P66 shall not propose any monitoring frequency that is less frequent than annually.
- iii. Equipment/Units Handling Benzene-Containing Waste Streams at Equipment/Units within the Wastewater Treatment Plant other than the Equipment/Units Identified in Subparagraphs 62.d.i. and ii. Commencing no later than 30 days after the Date of Entry and continuing thereafter, WRB/P66 shall conduct quarterly monitoring of the equipment at the Refinery’s wastewater treatment plant that handles benzene-containing waste streams—other than the equipment/units identified in Subparagraphs 62.d.i. and ii—using Method 21.

63. End-of-Line Sampling: General Requirement. In addition to complying with the 6 BQ Compliance Option, WRB/P66 shall limit the end-of-line (“EOL”) uncontrolled benzene quantity at the Refinery to 6 megagrams in a calendar year. The EOL benzene quantity shall be determined in accordance with the requirements of Paragraphs 64–66.

64. EOL Sampling Plan.

a. Submission of new EOL Sampling Plan pursuant to this Consent Decree (“Wood River CD EOL Sampling Plan”). By no later than 30 days after the Date of Entry, WRB/P66 will submit to EPA for approval a new end-of-line sampling plan (“Wood River CD EOL Sampling Plan”) designed to identify the sampling of benzene waste streams that WRB/P66 will undertake to estimate quarterly and annual uncontrolled benzene quantities under this Consent Decree. This Wood River CD EOL Sampling Plan shall include the additional sampling that WRB/P66 has agreed to implement under this Consent Decree.

b. Wood River CD EOL Sampling Plan Content Requirements. The Wood River CD EOL Sampling Plan for the Wood River Refinery, at a minimum, shall:

- i. Require sampling of all uncontrolled waste streams that count toward the 6 BQ calculation and contain greater than 0.05 Mg/yr of benzene;
- ii. Identify the proposed sampling locations and methods for flow calculations to be used in calculating quarterly and projected annual uncontrolled benzene quantity calculations under the terms of Paragraph 66; and
- iii. Establish the frequency of sampling at each location, which shall not be less than the minimum frequencies required by Subparagraph 65.b.

c. Revisions to the Wood River CD EOL Sampling Plan.

- i. If, after submission of the Wood River CD EOL Sampling Plan, WRB/P66 proposes to make any changes to the sampling locations or methods for flow calculations to be used in the quarterly benzene determinations for the Wood River Refinery, WRB/P66 shall submit a Revised Wood River CD EOL Sampling Plan that shall contain any proposed changes. The Revised Wood River CD EOL Sampling Plan shall be subject to EPA approval.
- ii. If changes in processes, operations, or other factors lead WRB/P66 to conclude that the Wood River CD EOL Sampling Plan for the Wood River Refinery—or revisions to that Plan—may no longer provide a representative basis for estimating the Wood River Refinery's annual or quarterly EOL benzene quantity, then by no later than 90 days after WRB/P66 makes this determination, WRB/P66 will submit to EPA a revised Wood River CD EOL Sampling Plan.

d. Timing for Implementation. WRB/P66 will implement the sampling required under the Wood River CD EOL Sampling Plan, and under any subsequent revisions, during the first full calendar quarter after WRB/P66 submits the Plan or revisions. WRB/P66 will continue to implement the Wood River CD Revised Sampling Plan, and any revisions, unless and until: (i) EPA disapproves the Plan or revisions; or (ii) WRB/P66 modifies the Plan or revisions, with EPA's approval, under Subparagraph 64.c.i.

65. EOL Sampling.

a. At the Master Box.

- i. Daily Sampling. WRB/P66 shall take, and have analyzed, at least one representative sample each day from the Master Box located at “K” Street and 2<sup>nd</sup> Street within the Refinery. For purposes of this Paragraph and due to holidays and unexpected laboratory issues, the “daily” requirement shall be met if, during a rolling 365-day period, WRB/P66 takes, and has analyzed, at least 345 days of samples.
- ii. If at the end of two consecutive calendar years, the annual uncontrolled benzene quantity contribution from the Master Box as determined by EOL sampling results at the Master Box is, individually for each of the two years, less than or equal to 2.5 megagrams benzene, then WRB/P66 may change from daily to weekly sampling at the Master Box. “Weekly” shall mean a calendar week from Sunday through Saturday.

b. At All Other Locations. Except for sampling at the Master Box, in each calendar quarter, WRB/P66 must take and have analyzed at least three representative samples from all waste streams identified in the Wood River CD EOL Sampling Plan.

66. Quarterly and Annual Projections of Uncontrolled Benzene Quantities. At the end of each calendar quarter and based on EOL sampling results and approved flow calculations, WRB/P66 will calculate a quarterly and projected annual uncontrolled benzene quantity for the Wood River Refinery. In making this calculation, WRB/P66 will use the average of all the samples collected at each sampling location. WRB/P66 will submit these calculations in the reports due under Section VIII (Reporting and Recordkeeping) of this Decree.

67. Corrective Measures. If the quarterly uncontrolled benzene quantity equals or exceeds 1.5 megagrams or if the projected annual uncontrolled benzene quantity equals or exceeds 6 megagrams for the then-current compliance year, then by no later than 60 Days after the end of the calendar quarter in which this occurred, WRB/P66 will submit a compliance

assurance plan to EPA for approval. In that compliance assurance plan, WRB/P66 will identify the cause(s) of the elevated benzene quantities, including the estimated start date of each cause, all corrective actions that WRB/P66 has taken or plans to take to ensure that the cause(s) will not recur, and the schedule of actions that WRB/P66 will take to ensure that the Refinery complies with the BWON and this Decree's 6 megagrams EOL limit for the calendar year. WRB/P66 will implement the plan unless and until EPA disapproves it. If, through any investigation, WRB/P66 determines that a benzene waste stream that it believed was controlled was actually uncontrolled, or if WRB/P66 identifies a previously-unknown uncontrolled benzene waste stream, WRB/P66 shall amend and resubmit all affected TAB reports, up to five years prior to the date of discovery.

68. Exemptions to Corrective Measures and Third-Party Assistance: If WRB/P66 can identify the reason(s) in any particular calendar quarter that the quarterly and projected annual calculations result in benzene quantities in excess of those identified in Paragraph 67, and WRB/P66 can state that it does not expect that reason or reasons to recur or if WRB/P66 has already identified the reason(s) for the benzene quantities in excess of those identified in Paragraph 67 and WRB/P66 has previously submitted a compliance plan but WRB/P66 had not yet completed implementation of that plan, then WRB/P66 may exclude the benzene quantity attributable to the identified reason(s) from the projected calendar year quantity. If that exclusion results in no potential violation of the Benzene Waste Operations NESHAP, WRB/P66 will not be required to submit a compliance assurance plan to EPA under Paragraph 67 (or a new compliance assurance plan under Paragraph 67 if one was previously submitted), and WRB/P66 may exclude the uncontrolled benzene attributable to the identified reason(s) in determining the applicability of Paragraph 69. At any time that WRB/P66 proceeds under this Paragraph,

WRB/P66 will describe how it satisfied the conditions in this Paragraph in the reports due under Section VIII of this Decree.

69. Third Party Assistance. If the quarterly uncontrolled benzene quantity equals or exceeds 1.5 megagrams in two consecutive quarters, or if the projected annual uncontrolled benzene quantity exceeds 6.0 megagrams, then within 60 days of the occurrence WRB/P66 will retain a third-party contractor to undertake a TAB study and compliance review at the Refinery. By no later than 60 days after WRB/P66 receives the results of the third-party TAB study and compliance review, WRB/P66 will submit the results to EPA and submit a plan and schedule for implementing the recommendations for reducing the uncontrolled benzene quantity identified in the third-party study and compliance review. WRB/P66 will implement the plan unless and until EPA disapproves.

70. Segregated Stormwater Drains. By no later than the Date of Entry, WRB/P66 shall identify/mark all area drains that are segregated stormwater drains.

71. Carbon Canisters. At all locations within the Wood River Refinery where carbon canisters are currently installed and used as the control device for complying with the BWON, WRB/P66 shall implement and comply with the following from the Effective Date of this Consent Decree through termination:

a. Dual Canister Option. Except as provided in Subparagraph 71.e., by no later than Date of Entry, WRB/P66 shall use only primary and secondary carbon canisters, operated in series (the "dual-canister" option). WRB/P66 may comply with the requirements of the dual canister option required under this Subparagraph by using a single canister with a "dual carbon bed" if the dual carbon bed configuration allows for breakthrough monitoring between the primary and secondary beds.



b. Monitoring for Breakthrough in Dual Canister Systems. WRB/P66 shall conduct breakthrough monitoring between the primary and secondary carbon canisters or beds at times when there is actual flow to the carbon canister, in accordance with the frequency specified in 40 C.F.R. § 61.354(d), and will monitor the outlet of the secondary canister on a monthly basis or at its design replacement interval (whichever is more frequent) to verify the proper functioning of the system.

c. Breakthrough definition. For dual carbon canisters in series, "breakthrough" between the primary and secondary canister is defined as any reading equal or greater to 50 ppmv VOC or 1 ppmv benzene. At its option, WRB/P66 may utilize a concentration for "breakthrough" that is lower than 50 ppmv VOC or 1 ppmv benzene.

d. Replacing Canisters in Dual Canister Systems.

i. WRB/P66 shall immediately replace the primary carbon canister or bed immediately when breakthrough is detected. Unless both the primary and secondary carbon canisters or beds are replaced with fresh ones, the original secondary carbon canister or bed shall become the new primary carbon canister or bed and a fresh secondary carbon canister or bed shall be installed. In all cases, any carbon canister or bed used as the primary unit shall have sufficient capacity to meet the breakthrough definition of Subparagraph 71.c. For purposes of this Subparagraph 71.d, "immediately" means no later than eight hours for canisters of 55 gallons or less and no later than 24 hours for canisters greater than 55 gallons. If WRB/P66 chooses to define breakthrough for primary carbon canister replacement at 5 ppm or lower VOC, it may replace primary canisters of 55 gallons or less within 24 hours of detecting breakthrough.

ii. In lieu of replacing the primary canister immediately, WRB/P66 may elect to monitor the outlet of the secondary canister starting the day that breakthrough

between the primary and secondary canister is identified and each calendar day thereafter. This daily monitoring will continue until the primary canister is replaced. If the monitored parameter (either benzene or VOC) is detected above background at the outlet of the secondary canister during this period of daily monitoring, both canisters must be replaced within eight hours.

e. Limited Use of Single Canisters. WRB/P66 may utilize properly sized single canisters for short-term operations on temporary waste management units (such as with temporary storage tanks or as temporary control devices), provided that such temporary use lasts for no longer than 30 days. For canisters operated as part of a single canister system, breakthrough is defined for purposes of this Decree as any reading of VOC or benzene above background. WRB/P66 will monitor for breakthrough no less frequently than on each business day (Monday through Friday, excluding legal holidays) when there is actual flow to the carbon canister.

f. Replacing Single Canisters. WRB/P66 will replace the single carbon canister with a fresh carbon canister, discontinue flow, or route the stream to an alternate, appropriate device immediately when breakthrough is detected. For this Subparagraph 71.f., "immediately" will mean eight hours for canisters of 55 gallons or less and 24 hours for canisters greater than 55 gallons. If, under this Subparagraph, flow to a single canister is discontinued, such canister may not be placed back into BWON vapor control service until it has been appropriately regenerated or replaced.

g. Maintaining Canister Supplies. WRB/P66 will maintain a supply of fresh carbon canisters at the Wood River Refinery at all times.

h. Records Relating to Canisters. Records regarding compliance with Paragraph 71 shall be maintained in accordance with 40 C.F.R. § 61.356(j)(10).

72. Fence Line Monitoring Program.

a. Locations for Fence Line Monitoring. By no later than September 30, 2018, WRB/P66 will comply with the fence line monitoring provisions set forth at 40 C.F.R. § 63.658 at the locations depicted in Appendix C of this Consent Decree. All monitoring locations depicted in Appendix C of this Consent Decree must comply with the applicable provisions of 40 C.F.R. § 63.658, even if they are not otherwise required monitoring locations under 40 C.F.R. § 63.658. Notwithstanding the foregoing, WRB/P66 shall comply with the reporting requirements set forth at 40 C.F.R. § 63.655(h)(8) for only those locations that are required to be monitored under 40 C.F.R. § 63.658. For those locations that are required to be monitored under 40 C.F.R. § 63.658, WRB/P66 shall submit any required reports in accordance with the applicable reporting compliance date(s) in 40 C.F.R. Part 63, Subpart CC. For those locations that are required to be monitored only pursuant to this Consent Decree, WRB/P66 shall report the monitoring results in the compliance status report due under Section VIII of this Decree (Reporting and Recordkeeping).

b. Sampling. WRB/P66 shall collect a sample from each monitor at each sampling location depicted on Appendix C once every 14 days. The sample shall be collected pursuant to the requirements set forth in 40 C.F.R. § 63.658 or as allowed by any Broadly Applicable Approved Alternative Test Methods (“BAAATM”) approved by EPA (as posted at <https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods>), provided that the BAAATM is applicable to 40 C.F.R. § 63.658.

c. Root Cause Investigation and Corrective Action. WRB/P66 shall conduct a root cause analysis and implement corrective action pursuant to 40 C.F.R. §§ 63.658(g) and (h) any time that a sampling result—averaged over the 26 most recent sampling events—at any

sampling location depicted on Appendix C shows an average benzene concentration greater than 7.0 micrograms per cubic meter. Root cause analysis and corrective action may include, but is not limited to:

- i. Leak inspection using Method 21 of Part 60, Appendix A-7 of [Title 40] and repairing any leaks found;
- ii. Leak inspection using optical gas imaging and repairing any leaks found;
- iii. Visual inspection to determine the cause of the high benzene emissions and implementing repairs to reduce the level of emissions;
- iv. Employing progressively more frequent sampling, analysis and meteorology (*e.g.*, using shorter sampling periods for Methods 325A and 325B of Appendix A of [Part 63], or using active sampling techniques).

Individual sample analysis shall be based on 40 C.F.R. § 63.658 or any BAAATM approved by EPA (as posted at <https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods>), provided that the BAAATM is applicable to 40 C.F.R. § 63.658.

73. New Vacuum Truck Unloading Facility to Control Additional Benzene Waste Streams. By no later than December 31, 2018, WRB/P66 shall install a new vacuum truck unloading facility that will comply with the applicable standards of 40 C.F.R. Part 61, Subpart FF. This facility will be designed to control at least 0.2 Mg/yr of benzene from liquid waste streams that were historically off-loaded to a process sewer at Site 9, which is an uncontrolled vacuum truck unloading facility. Once installed, WRB/P66 shall ensure that the in-facility Waste Disposal Permit System is updated to reflect that at least 0.2 Mg/yr of uncontrolled benzene liquid waste streams that were historically routinely sent to Site 9 in 2017 or earlier must hereafter be sent to the new controlled vacuum truck unloading facility installed pursuant to this Paragraph or continue to be sent to other controlled drop-off sites. The streams

to be routed to this new controlled vacuum truck unloading facility or another existing controlled site, will include routine water draws from storage tanks, including tanks containing gasoline components, BEU feed material, and crude storage tanks.

74. Reporting. In the compliance status reports required under Section VIII, WRB/P66 shall submit the following information:

a. Annual TAB Report. In the compliance status report due on July 31st of each calendar year, WRB/P66 shall submit a copy of the annual TAB report for the preceding calendar year. For leaks detected at or above 500 ppmv in the BWON controlled system that occurred during the reporting period, WRB/P66 will also include the following information in its Annual TAB Report:

- i. Component ID;
- ii. Description of component;
- iii. Date and time the leak was identified;
- iv. Detection methodology (OGI or Method 21);
- v. If the leak was found with or confirmed through Method 21, the Method 21 ppmv reading;
- vi. All repairs taken to stop the leak; and
- vii. Date and time of the repair.

b. Training. WRB/P66 shall submit training information sufficient to demonstrate that the training required by Paragraph 55 has occurred, including dates of all training sessions that occurred during the reporting period and the number of people trained.

c. Laboratory Audits. WRB/P66 shall submit reports for initial and subsequent audits conducted pursuant to Paragraph 58, through the semi-annual period for which the report is due, including in each such report, at a minimum, the identification of each laboratory audited, a description of the methods used in the audit, and the results of the audit.

d. EOL Sampling Results. For the sampling conducted pursuant to Paragraph 65, WRB/P66 shall submit:

- i. A list of all waste streams sampling;
- ii. The results of the benzene analysis for each sample; and
- iii. The computation of the quarterly and projected calendar year uncontrolled benzene quantity pursuant to Paragraph 66.

e. Exemptions to Corrective Measures. If applicable, how WRB/P66

satisfied the conditions of Paragraph 68.

f. For the Carbon Canisters. If WRB/P66 uses the option set forth in

Subparagraph 71.d.ii and breakthrough of the secondary carbon canister occurs, WRB/P66 shall

report:

- i. The source of the emissions;
- ii. The date and time that breakthrough was detected on the primary canister;
- iii. The date and time that breakthrough was detected on the secondary canister; and
- iv. The date and time that the canisters were replaced.

g. For the Fence Line Monitoring:

- i. A summary of the fence line monitoring data collected pursuant to Subparagraph 72.b at each of the fence line monitoring locations listed in Appendix C, including a specific identification of all instances when the action level under this Consent Decree or under 40 C.F.R. § 63.658 was exceeded for an annual average at these locations; and
- ii. All root cause analyses and corrective actions completed during the reporting period pursuant to Subparagraph 72.c or 40 C.F.R. § 63.658(b) or (h) for the fence line monitoring locations listed in Appendix C:

(1) At a minimum, the root cause analysis report must describe: (a) the date of the elevated sampling result; (b) the value of the elevated sampling result; (c) the actions taken by WRB/P66 to determine the cause of the elevated

sampling result; and (d) the root cause(s) of the elevated sampling result.

- (2) At a minimum, the corrective action analysis report must identify the proposed corrective action(s) and a timeline for completion of the corrective action(s). To the extent there is/are outstanding corrective action(s) which have not been completed at the time the report is submitted, WRB/P66 shall notify EPA of completion of each outstanding corrective action in the semi-annual report covering the period during which the corrective action was completed. Nothing in this Paragraph is intended to prohibit WRB/P66 from using a report submitted pursuant to 40 C.F.R. § 63.658 to satisfy the reporting obligations of this Paragraph.

h. For the New Vacuum Truck Unloading Facility. In the compliance status report due on July 31, 2019, WRB/P66 shall include:

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

**D. CEMS Downtime Minimization, Operation and Maintenance, and Root Cause Analysis and Corrective Action**

75. CEMS Operation and Maintenance Plan. By no later than 180 days after the Date of Entry of this Consent Decree, WRB/P66 shall develop and submit for EPA review a comprehensive CEMS Operation and Maintenance Plan (“CEMS O&M Plan” or “Plan”) for the Wood River Refinery that is designed to enhance the performance of the CEMS, improve CEMS accuracy and stability, and minimize periods of CEMS downtime. The CEMS O&M Plan shall include, at a minimum, each element identified in Paragraphs 76–79. The CEMS O&M Plan

shall also include a list of existing CEMS and this list will be updated as necessary in the annual review and update undertaken pursuant to Paragraph 79.d. EPA's review of WRB/P66's CEMS O&M Plan shall be undertaken pursuant to Paragraph 80.

76. CEMS Operations and Maintenance Training. WRB/P66 shall provide training to all individuals (WRB/P66 employees and contractors) involved in CEMS operations and maintenance in order to ensure and maintain necessary levels of competence in maintaining and operating CEMS. Initial training must be provided within 90 days after WRB/P66's submission of the CEMS O&M Plan. Annual refresher training must be provided each calendar year thereafter until termination of this consent decree. All newly-hired individuals involved in CEMS operations and maintenance shall be trained prior to undertaking any CEMS-related responsibilities. The CEMS O&M Plan shall additionally ensure that all individuals involved in CEMS operations and maintenance have access to and are familiar with the CEMS O&M Plan. These requirements shall be identified and described in the CEMS O&M Plan.

77. CEMS Testing and Calibration. Commencing on the Date of Lodging and except as provided in Subparagraph 77.a., WRB/P66 shall certify, calibrate, maintain, and operate all CEMS in accordance with the provisions of 40 C.F.R. §§ 60.7 and 60.13 that are applicable to CEMS (excluding those provisions applicable only to Continuous Opacity Monitoring Systems) and 40 C.F.R. Part 60, Appendices A and F, and the applicable performance specification test of 40 C.F.R. Part 60, Appendix B. These requirements shall be included in the CEMS O&M Plan.

a. CEMS that meet the following criteria are exempt from the requirements of this Paragraph 77:



- i. Any CEMS certified, calibrated, maintained and operated in accordance with 40 C.F.R. Part 96, Subpart H and/or 40 C.F.R. Part 75; or
- ii. Any CEMS not required to comply with 40 C.F.R. §§ 60.7 and 60.13.

- b. If WRB/P66 determines that it no longer needs to operate a CEMS

because an underlying legal requirement (*e.g.*, a federal or state regulation, or a permit) no longer requires the operation of the CEMS, then WRB/P66 shall notify EPA, pursuant to Section XVI (Notices) that WRB/P66 has removed the CEMS that is the subject of the submission. In the notice, WRB/P66 shall identify the legal requirement that formerly required the CEMS' operation, and affected emission unit(s), and the date that the legal requirement no longer was applicable.

78. CEMS Operation. Commencing on the Date of Lodging, WRB/P66 shall operate each CEMS at all times that any associated emission unit(s) is/are in operation, including during periods of process unit Startup, Shutdown, and/or Malfunction.

79. Preventive Maintenance and Repair and Quality Assurance/Quality Control ("QA/QC"). By no later than the date of submission of the CEMS O&M Plan, WRB/P66 shall develop the programs set forth in Subparagraphs 79.a.–79.c. for CEMS. Commencing 90 days after submission of the CEMS O&M Plan and continuing until termination of this Consent Decree, WRB/P66 shall implement the Subparagraphs 79.a.–79.c. programs, as updated by the requirements of Subparagraph 79.d. and/or the results of EPA's review and comment pursuant to Paragraph 80 and/or the results of dispute resolution pursuant to Paragraph 80.

- a. CEMS Routine Preventive Maintenance Program. The CEMS Routine Preventive Maintenance Program shall identify and require implementation of a regularly-scheduled set of activities designed to minimize problems that cause CEMS downtime.

Such activities and procedures may be based initially on the CEMS vendor's recommendations. Routine preventative maintenance procedures shall be updated periodically to include such procedures as may be necessary or appropriate based on experience with each CEMS.

b. CEMS QA/QC Program. The CEMS QA/QC Program shall identify and require implementation of activities to assess and maintain the quality of continuous emissions monitoring data, including regular (e.g., daily, weekly, monthly) routine internal (and, as needed, external) maintenance and operation checks designed to maintain or improve data quality and minimize CEMS downtime. Internal checks include, but are not limited to, CEMS inspections, periodic calibrations, routine maintenance and measures to assess the quality of CEMS data (*i.e.*, accuracy and precision). External checks include, but are not limited to, independent third-party CEMS audits, third-party sampling and analysis for accuracy and precision, or other assessments to ensure accurate CEMS operations.

c. CEMS Repair Program. The CEMS Repair Program shall identify and require the implementation of procedures designed to ensure the prompt repair of CEMS to address both routine and non-routine maintenance and repair. As part of its CEMS Repair Program, WRB/P66 shall: (i) maintain a spare parts inventory adequate to support normal operating and CEMS preventive maintenance requirements; and (ii) establish written procedures for the acquisition of parts on an emergency basis (*e.g.*, vendor availability on a next-day basis). An individual at the Wood River Refinery shall be designated for overall responsibility for maintaining the adequacy of the spare parts inventory. The on-site spare parts inventory may initially be based on the vendor's recommendations, and shall be modified on an as-needed basis.

d. Review and Update of Programs. No less than one time per calendar year beginning in the calendar year after the date that WRB/P66 submits its CEMS O&M Plan,

WRB/P66 shall review and update, as needed, its CEMS Routine Preventive Maintenance Programs, its CEMS QA/QC Program, and its CEMS Repair Program to incorporate necessary or appropriate modifications based on operating experience with each CEMS, including incorporating any modifications necessary to address findings from each CEMS Downtime Root Cause Analysis and Corrective Action Report written pursuant to Paragraph 81 since the last update(s).

80. EPA Review and Comment on CEMS Operation and Maintenance Plan. EPA may provide written comments on WRB/P66's CEMS O&M Plan, in whole or in part, or EPA may decline to comment, as provided in this Paragraph.

a. If EPA provides written comments within 60 days of receipt of WRB/P66's CEMS O&M Plan, then within 60 days of receiving such comments, WRB/P66 shall either: (i) modify the Plan consistent with EPA's written comments; or (ii) notify EPA which of the comments will be implemented, and which of the comments WRB/P66 will not implement and why. Within 60 days of receiving WRB/P66's position, EPA may either accept WRB/P66's position or provide final comments on the CEMS O&M Plan for implementation. If WRB/P66 disagrees with EPA's final comments, WRB/P66 may invoke dispute resolution pursuant to Section XII of the Consent Decree.

b. After 60 days from the date of WRB/P66's submission of a CEMS O&M Plan, EPA may nonetheless provide written comments requiring changes to the Plan, which WRB/P66 shall thereafter implement unless implementation of the written comments would be unduly burdensome given the degree to which WRB/P66 has proceeded with implementing the CEMS O&M Plan or because it is otherwise unreasonable. If WRB/P66 believes any of EPA's comments are unduly burdensome or otherwise unreasonable, then within 60 days of receipt of

EPA's written comments, WRB/P66 must notify EPA (i) which of the comments will be implemented; (ii) which of the comments WRB/P66 believes is unduly burdensome, and why; and (iii) which of the comments WRB/P66 believes is otherwise unreasonable, and why. Within 60 days of receiving WRB/P66's position, EPA may either accept WRB/P66's position or invoke dispute resolution pursuant to Section XII of the Consent Decree.

c. Upon the expiration of 60 days from the date of WRB/P66's submission of a CEMS O&M Plan, WRB/P66 shall implement the CEMS O&M Plan in accordance with the requirements and schedule within the Plan. During the pendency of any dispute resolution proceeding pursuant to this Paragraph 80, WRB/P66 shall implement all parts of the CEMS O&M Plan that are not the subject of the dispute and shall also implement the disputed parts consistent with WRB/P66's proposal. After completion of the dispute resolution proceeding, WRB/P66 shall implement the disputed parts of the CEMS O&M Plan consistent with the results of the dispute resolution proceeding.

81. CEMS Downtime Root Cause Analysis and Corrective Action.

a. CEMS Downtime Triggering Event. At any time that, in a calendar quarter, a CEMS at the Wood River Refinery has downtime greater than 5% of the time in the calendar quarter, WRB/P66 shall conduct a CEMS Downtime Root Cause Analysis. For purposes of the 5% downtime calculation for the period between the Date of Entry and the completion of the first four full calendar quarters after the Date of Entry, "downtime" shall mean the period of time during the operation of the emission unit being monitored in which any of the required CEMS data either are not recorded or are invalid for any reason (*e.g.*, monitor Malfunctions, data system failures, unknown causes, *etc.*), but shall not include: (i) downtime associated with routine CEMS zero and span checks and QA/QC activities required by this

Consent Decree and/or an applicable regulation; and (ii) up to 8 hours per month of downtime associated with preventive maintenance. For purposes of the 5% downtime calculation for the period starting in the fifth full calendar quarter after the Date of Entry and continuing through the termination of this Consent Decree, “downtime” shall mean the period of time during the operation of the emission unit being monitored in which any of the required CEMS data either are not recorded or are invalid for any reason (*e.g.*, monitor Malfunctions, data system failures, preventive maintenance, unknown causes, *etc.*), but shall not include downtime associated with routine CEMS zero and span checks and QA/QC activities required by this Consent Decree and/or an applicable regulation. CEMS data that meet the requirements of 40 C.F.R. § 60.13 shall be considered “valid” for purposes of determining downtime.

b. CEMS Downtime Root Cause Analysis and Corrective Action Report.

- i. By no later than 45 days after the end of the calendar quarter in which the requirement to conduct a CEMS Downtime Root Cause Analysis is triggered pursuant to Subparagraph 81.a, WRB/P66 shall prepare a CEMS Downtime Root Cause Analysis and Corrective Action Report that shall, at a minimum, include the following elements:
- (1) An identification and detailed analysis setting forth the root cause(s) and any contributing cause(s) of the CEMS downtime;
  - (2) The steps, if any, taken to limit the duration of the CEMS downtime;
  - (3) An analysis of the measures reasonably available to prevent the root cause(s) and any contributing cause(s) of the CEMS downtime from recurring. This analysis shall include an evaluation of possible design, operational, and maintenance measures; and
  - (4) The corrective actions taken or to be taken consistent with the requirements of Subparagraph 81.c.

- ii. If the same CEMS has greater than 5% downtime in two consecutive quarters and if the corrective actions identified in the CEMS Downtime Root Cause Analysis and Corrective Action Report for the initial quarter have not yet been completed by the end of the second quarter, then, with respect to Element (1) above, WRB/P66 shall first undertake an investigation sufficient to determine whether the root cause(s) and contributing cause(s) as between the first and second quarters were the same:
  - (1) If the root cause(s) and contributing cause(s) were the same, WRB/P66 can so state and attach a copy of the prior report for the initial 5% CEMS downtime;
  - (2) If they were not, WRB/P66 shall comply with the requirements of Subparagraph 81.b.i.

c. CEMS Downtime Corrective Action. WRB/P66 shall undertake as expeditiously as reasonably possible such reasonably available corrective actions that are necessary to correct the cause of the CEMS downtime and to prevent a recurrence of the root cause(s) and any contributing cause(s) identified in the CEMS Downtime and Root Cause Analysis and Corrective Action Report. In the report required under this Paragraph, WRB/P66 shall include a description of any corrective actions already completed or, for corrective actions that are not yet completed, a schedule for their implementation including proposed commencement and completion dates.

d. CEMS Downtime Third Party Evaluation or Root Cause Analysis. For any specific CEMS for which a CEMS Downtime Root Cause Analysis and Corrective Action Report is required pursuant to Subparagraph 81.b.i twice within 12 consecutive calendar quarters, WRB/P66 shall retain an independent third party to evaluate WRB/P66's assessment of the CEMS downtime cause(s). By no later than 120 days after WRB/P66's required preparation of the second CEMS Downtime Root Cause Analysis and Corrective Action Report, the independent third party shall prepare a written report ("CEMS Downtime Third Party Report")

which may include recommendations for additional corrective actions and/or modifications to WRB/P66's CEMS O&M Plan.

e. Reports to EPA. WRB/P66 shall include a copy of each CEMS Downtime Root Cause Analysis and Corrective Action Report and each CEMS Downtime Third Party Report in the first semi-annual report due under Section VIII of the Consent Decree (Reporting and Recordkeeping) that WRB/P66 submits after this (these) Report(s) is (are) required to be completed.

82. EPA Review and Comment on CEMS Downtime Corrective Actions; WRB/P66 Response; Dispute Resolution. After a review of a CEMS Downtime Root Cause Analysis and Corrective Action Report, EPA may notify WRB/P66 in writing of (1) any deficiencies in the corrective actions listed in the findings; and/or (2) any objections to the schedules of implementation of the corrective actions and explain the basis for EPA's objections.

a. If EPA provides written comments within 60 days of receiving WRB/P66's CEMS Downtime Root Cause Analysis and Corrective Action Report, then WRB/P66 shall respond as follows:

- i. If WRB/P66 has not yet commenced implementation of the corrective action, WRB/P66 will implement an alternative or revised corrective action or implementation schedule based on EPA's comments.
- ii. If a corrective action that EPA has identified as deficient has already commenced or is already completed, then WRB/P66 is not obligated to implement any alternative or additional corrective action identified by EPA. However, WRB/P66 shall be on notice that EPA considers such corrective action deficient and not acceptable for remedying any subsequent, similar root cause(s) of any future CEMS monitor downtime.

b. After sixty 60 days from the date of WRB/P66's submission of a WRB/P66's CEMS Downtime Root Cause Analysis and Corrective Action Report, EPA may

nonetheless provide written comments requiring changes to the Plan, which WRB/P66 shall thereafter implement unless implementation of the written comments would be unduly burdensome given the degree to which WRB/P66 has proceeded with implementing the WRB/P66's CEMS Downtime Root Cause Analysis and Corrective Action Report or because it is otherwise unreasonable. If WRB/P66 believes any of EPA's comments are unduly burdensome or otherwise unreasonable, then within 60 days of receipt of EPA's written comments, WRB/P66 must notify EPA (i) which of the comments will be implemented; (ii) which of the comments WRB/P66 believes is unduly burdensome, and why; and (iii) which of the comments WRB/P66 believes is otherwise unreasonable, and why. Within 60 days of receiving WRB/P66's position, EPA may either accept WRB/P66's position or invoke dispute resolution pursuant to Section XII of the Consent Decree.

c. During the pendency of any dispute resolution proceeding pursuant to this Paragraph, WRB/P66 shall implement all parts of the WRB/P66's CEMS Downtime Root Cause Analysis and Corrective Action Report that are not the subject of the dispute and shall also implement the disputed parts consistent with WRB/P66's proposal. After completion of the dispute resolution proceeding, WRB/P66 shall implement the disputed parts of the WRB/P66's CEMS Downtime Root Cause Analysis and Corrective Action Report consistent with the results of the dispute resolution proceeding.

**E. Certification**

83. By signing this Consent Decree, WRB/P66 certifies that it is not required to perform or develop any of the mitigation measures set forth in Paragraphs 27, 29, 40–47, 71, and 73 by any federal, state, or local law or regulation and is not required to perform or develop these measures by agreement, grant, or as injunctive relief awarded in any other action in any forum;



that these measures are not ones that WRB/P66 was planning or intending to construct, perform, or implement other than in settlement of the claims resolved by this Decree; and that WRB/P66 will not receive any reimbursement for any portion of the costs of these measures from any other person. As to Paragraph 72, WRB/P66 makes the same certification as in the previous sentence except for the fence line monitor identified as 2/EPA-2 on Appendix C, which is required pursuant to 40 C.F.R. § 63.658.

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

84. **Permits Needed to Meet Compliance Obligations.** If any compliance obligation under this Section V (Injunctive Relief) requires WRB/P66 to obtain a federal, state, or local permit or approval, WRB/P66 shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. WRB/P66 may seek relief under the provisions of Section XI of this Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if WRB/P66 has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

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

a. Prior to termination of this Consent Decree, WRB/P66 shall submit to permitting authorities in the State of Illinois complete applications, amendments and/or supplements to incorporate as “applicable requirements” the limits and standards listed in Subparagraph 85.b. into non-Title V, federally enforceable permits that will survive termination of this Consent Decree.

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

- i. Flaring Emission Reductions and Controls. Paragraphs A4–A7, A9, A12, A14–A16, and A18–A25 in Appendix A;
- ii. Leak Detection and Repair. Paragraph 15;
- iii. CEMS Downtime Minimization. Paragraph 77 and the requirement in Paragraph 75 to have a CEMS Operation and Maintenance Plan with the minimum elements in Paragraphs 76–79; and
- iv. All of Section VI (Emission Credit Generation); provided however, that WRB/P66 is not required to incorporate into a federally enforceable permit the prohibitions/other language of Section VI on the use of any CD Emissions Reductions or 2005 CD Emissions Reductions (as defined in Section VI) if WRB/P66, upon seeking termination of this Consent Decree, demonstrates that those CD Emissions Reductions and/or 2005 CD Emissions Reductions no longer are capable of being used in a manner prohibited by Section VI.

86. Modifications to Title V Operating Permits. Prior to termination of this Consent Decree, WRB/P66 shall submit complete applications to permitting authorities in the State of Illinois to modify, amend, or revise the Title V permit of the Wood River Refinery to incorporate the limits and standards identified in the preceding Paragraph into the Title V permit. The Parties agree that the incorporation of these emission limits and standards into Title V Permits shall be done in accordance with applicable state or local Title V rules. The Parties

agree that the incorporation may be by “amendment” under 40 C.F.R. § 70.7(d) and analogous state Title V rules, where allowed by state law.

## **VI. EMISSION CREDIT GENERATION**

### 87. Definitions.

a. “CD Emissions Reductions” shall mean any emissions reductions that result from any projects, controls, or any other actions used to comply with this Consent Decree.

b. “2005 CD Emissions Reductions” shall mean any emissions reductions that result from any projects, controls, or any other actions at the Wood River Refinery used to comply with the 2005 Consent Decree.

88. Prohibitions. WRB/P66 shall neither generate nor use any CD Emissions Reductions nor any 2005 CD Emissions Reductions: (i) as netting reductions; (ii) as emissions offsets; or (iii) to apply for, obtain, trade, or sell any emission reduction credits. Baseline actual emissions for each unit during any 24-month period selected by WRB/P66 shall be adjusted downward to exclude any portion of the baseline emissions that would have been eliminated as CD Emissions Reductions or 2005 CD Emissions Reductions had WRB/P66 been complying with this Consent Decree and the 2005 Consent Decree during that 24-month period. The prohibitions in this Paragraph do not apply to any projects that were permitted in accordance with the 2005 Consent Decree prior to the Effective Date of this Consent Decree (such as the CORE project).

89. Outside the Scope of the Prohibitions. Nothing in this Section is intended to prohibit WRB/P66 from seeking to, nor Illinois EPA from denying WRB/P66’s request to:

a. Use or generate emission reductions from emissions units that are covered by this Consent Decree to the extent that the proposed emissions reductions represent the

difference between CD Emissions Reductions and more stringent control requirements that WRB/P66 may elect to accept for those emissions units in a permitting process, except as provided in Paragraph 90;

b. Use or generate emissions reductions from emissions units that are not subject to an emission limitation or control requirement pursuant to this Consent Decree and were not subject to an emission limitation or control requirement pursuant to the 2005 Consent Decree; or

c. Use CD Emissions Reductions or 2005 CD Emissions Reductions for compliance with any rules or regulations designed to address regional haze or the non-attainment status of any area (excluding Prevention of Significant Deterioration and non-attainment New Source Review rules, but including, for example, Reasonably Achievable Control Technology (RACT) rules that apply to the Wood River Refinery); provided, however, that WRB/P66 shall not be allowed to trade or sell any CD Emissions Reductions or 2005 CD Emissions Reductions.

90. Additional Prohibition. Even if the Waste Gas mapping requirements of Paragraph A8 of Appendix A result in emissions lower than the allowable level under the flaring limitation in Paragraph A4 of Appendix A, such reductions shall be considered CD Emissions Reductions and shall be subject to the general prohibition set forth in Paragraph 88.

## **VII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

91. Lead Hazard Reduction Project. WRB/P66 shall implement a Supplemental Environmental Project (“SEP”) to abate lead-based paint hazards (“Lead Hazard Reduction SEP”) in accordance with all of the provisions of this Section VII and Appendix B to this Consent Decree. WRB/P66 shall spend not less than \$500,000 in Eligible Costs, as defined in Section IV (Definitions), to implement the Lead Hazard Reduction SEP. WRB/P66 shall

complete the SEP by no later than 24 months after the Effective Date of this Consent Decree; provided however, that the date may be extended by written agreement of the Parties.

92. WRB/P66 is responsible for the satisfactory completion of this SEP in accordance with the requirements of this Decree.

93. With regard to the Lead Hazard Reduction SEP, WRB/P66 certifies the truth and accuracy of each of the following:

a. That, as of the date of executing this Consent Decree, WRB/P66 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;

b. That the SEP is not a project that WRB/P66 was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Decree;

c. That WRB/P66 has not received and will not receive credit for the SEP in any other enforcement action;

d. That WRB/P66 will not receive any reimbursement for any portion of the SEP from any other person; and

e. That, (i) WRB/P66 is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 91; and (ii) WRB/P66 has inquired of the SEP recipient and/or SEP implementer whether either is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the recipient and/or the implementer that neither is a party to such a transaction. For purposes of these certifications, the term “open federal

financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

94. WRB/P66 shall include in each report required by Paragraph 98, a description of its progress toward implementing the SEP required by this Section. In addition, the report required by Paragraph 98 for the period in which the SEP is completed shall contain the following information (“SEP Completion Report”):

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

EPA may require information in addition to that described in this Paragraph in order to evaluate WRB/P66’s SEP Completion Report.

95. Disputes concerning the satisfactory performance of a SEP and/or the amount of Eligible Costs may be resolved under Section XII (Dispute Resolution). No other disputes arising under this Section shall be subject to dispute resolution.

96. Any public statement, oral or written, in print, film, or other media, made by WRB/P66 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 under

the Clean Air Act brought by the United States and the State of Illinois against WRB Refining LP and Phillips 66 Company.”

97. For federal and state income tax purposes, WRB/P66 agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing this SEP.

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

98. Semi-Annual Compliance Status Reports. On the dates and for the time periods set forth in Paragraph 100, WRB/P66 shall submit to EPA in the manner set forth in Section XVI (Notices) the following information:

- a. The information required in Paragraphs A28, A29, and A30 of Appendix A of this Decree;
- b. The LDAR information required in Paragraph 50 of this Decree;
- c. The BWON information required in Paragraph 74 of this Decree;
- d. The total downtime of each CEMS at the Refinery, expressed as a percentage of operating time for the calendar quarter;
- e. A description of any problems anticipated with respect to meeting the requirements of Section V and/or Appendix A at the Wood River Refinery;
- f. A description of the status of the SEP in Section VII of this Decree;
- g. For the semi-annual report due on July 31, the information required by Paragraph 99;
- h. Any additional matters required by any other Paragraph of this Consent Decree to be submitted in the semi-annual report; and
- i. Any additional matters that WRB/P66 believes should be brought to the attention of EPA.

99. Emissions Data. In the semi-annual report required to be submitted on July 31 of each year for the Wood River Refinery, WRB/P66 will provide a summary of annual

emissions data for the prior calendar year that will include the emissions from Covered Flares as specified in Paragraph A30 of Appendix A and the basis for the emissions estimate.

100. Due Dates. The first compliance status report shall be due 31 days after the first full half-year after the Effective Date of this Consent Decree (*i.e.*, either: (i) January 31 of the year after the Effective Date, if the Effective Date is between January 1 and June 30 of the preceding year; or (ii) July 31 of the year after the Effective Date, if the Effective Date is between July 1 and December 31). The initial report shall cover the period between the Effective Date and the first full half-year after the Effective Date (a “half-year” runs between January 1 and June 30 and between July 1 and December 31). Until termination of this Decree, each subsequent report will be due on January 31 and July 31 and shall cover the prior half-year (*i.e.*, January 1 to June 30 or July 1 to December 31).

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

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

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



102. The reporting requirements of this Consent Decree do not relieve WRB/P66 of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

### **IX. CIVIL PENALTY**

104. By no later than 30 days after the Date of Entry of this Consent Decree, WRB/P66 shall pay the sum of \$475,000 as a civil penalty to the United States and the State of Illinois. Of this total amount, \$415,000 shall be paid to the United States in accordance with Paragraph 105 and \$60,000 shall be paid to the State of Illinois in accordance with Paragraph 106.

105. WRB/P66 shall pay the penalty owed to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to WRB/P66 following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Southern District of Illinois, 9 Executive Dr., Fairview Heights, IL 62208. At the time of payment, WRB/P66 shall send a copy of the EFT authorization form, the EFT transaction record, and a transmittal letter: (i) to the United States in accordance with Section XVI of this Decree (Notices); (ii) by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and (iii) by mail to:

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

The transmittal letter shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States, et al. v. Phillips 66 Company, et al.*, and shall reference the civil action number and DOJ case number 90-5-2-1-06722/6.

106. WRB/P66 shall pay the penalty owed to the State of Illinois by certified or corporate check, payable to the Illinois Attorney General for deposit into the “Attorney General State Projects and Court Ordered Distribution Fund (801 Fund),” and shall be sent, along with one (1) copy thereof, by first class mail and delivered to:

Chief, Environmental Bureau  
Illinois Attorney General’s Office  
500 South Second Street  
Springfield, Illinois 62706

The name and number of the case shall appear on the check.

107. If any portion of the civil penalty due to the United States or the State of Illinois is not paid when due, WRB/P66 shall pay interest on the amount past due, accruing from the Effective Date through the date of payment, at the rate specified in 28 U.S.C. § 1961. Interest payment under this Paragraph shall be in addition to any stipulated penalty due.

108. WRB/P66 shall not deduct any penalties paid under this Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal income tax.

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

109. Failure to Pay Civil Penalty. If WRB/P66 fails to pay any portion of the civil penalty required to be paid under Section IX of this Decree (Civil Penalty) when due, WRB/P66 shall pay a stipulated penalty of \$2,500 per day for each day that the payment is late. Late

payment of the civil penalty and any accrued stipulated penalties shall be made in accordance with Paragraph 104.

110. Failure to Meet all Other Consent Decree Obligations. WRB/P66 shall be liable for stipulated penalties to the United States and Illinois for violations of this Consent Decree as specified in Paragraphs 111, 113, and 114 unless excused under Section XI of this Decree (Force Majeure). For those provisions where a stipulated penalty of either a fixed amount or 1.2 times the economic benefit of delayed compliance is available, the decision of which alternative to seek rests exclusively within the discretion of the United States.

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

**STIPULATED PENALTY TABLE 1**

<b>Violation</b>	<b>Stipulated Penalty</b>	
	<u>Pollutant</u>	<u>Penalty per Day per ton</u>
	SO <sub>2</sub>	\$ 40
	VOC	\$ 120
111.a. <u>Violation of Subparagraph A4.a.i.</u> Failure to comply with the refinery-wide 365-day rolling average limit on Waste Gas flaring	The amount of excess emissions during the event(s) which precipitate(s) the exceedance(s) of the 365-day rolling average limit is not the sole basis for calculating the stipulated penalty due. Instead, each day on which the 365-day rolling average limit is violated—which violations most likely continue even though the precipitating event and the excess emissions do not—counts as a separate day. WRB/P66 shall comply with Appendix 1.13 to calculate the stipulated penalties resulting from violating the flaring limitation in Subparagraph A4.a.i.	

<p>111.b. <u>Violation of Paragraph A7.</u> Failure to timely install the monitoring systems required by Paragraph A7 in accordance with the applicable requirements for such system.</p>	<p>Period of delay or noncompliance, <u>per monitoring system</u></p> <p>Days 1–30 Days 31–60 Days 61 and later</p>	<p>Penalty per day per monitoring <u>system</u></p> <p>\$ 750 \$1,250 \$2,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater</p>
<p>111.c. <u>Violation of Paragraph A8.</u> Failure to timely comply with the requirements for Paragraph A8 in accordance with the requirements of Paragraph A8</p>	<p>Period of delay or noncompliance</p> <p>Days 1–30 Days 31–60 Days 61 and later</p>	<p><u>Penalty per day</u></p> <p>\$ 500 \$ 750 \$1,000</p>
<p>111.d. <u>Violation of Paragraph A11.</u> Failure to timely install the project identified in Paragraph A11 in accordance with the requirements of Paragraph A11</p>	<p>Period of delay or noncompliance</p> <p>Days 1–30 Days 31–60 Days 61 and later</p>	<p><u>Penalty per day</u></p> <p>\$1,250 \$3,000 \$5,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater</p>
<p>111.e. <u>Violation of Certain Subparagraph A12.b.i, ii, iii, and iv Requirements.</u> Failure to comply with any of the following requirements in Subparagraph A12.b.i, ii, iii, or iv: (1) the Subparagraph A.12.b.i requirement to have one Compressor in the Distilling East/Low sulfur Gasoline/North Property FGRS Available for Operation and/or in operation 98% of the time; (2) the Subparagraph A12.b.i requirement to have two Compressors in the Distilling East/Low sulfur Gasoline/North Property FGRS Available for Operation and/or in operation 90% of the time;</p>	<p>Per FGRS, the number of hours or fraction thereof—over the allowed percentage—in a rolling 8760-hour period that a Compressor required to be Available for Operation is not: \$750; provided however, that stipulated penalties shall not apply for any hour or fraction thereof in which a Compressor’s unavailability did not result in flaring.</p>	

<p>(3) the Subparagraph A12.b.ii requirement to have one Compressor in the Coker North FGRS Available for Operation and/or in operation 98% of the time;</p> <p>(4) the Subparagraph A12.b.ii requirement to have two Compressors in the Coker North FGRS Available for Operation and/or in operation 90% of the time;</p> <p>(5) the Subparagraph A12.b.iii requirement to have three Compressors in the Distilling West FGRS Available for Operation and/or in operation 95% of the time;</p> <p>(6) the Subparagraph A12.b.iii requirement to have two Compressors in the Distilling West FGRS Available for Operation and/or in operation at all times;</p> <p>(7) the Subparagraph A12.b.iv requirement to have four Compressors in the Aromatics North/Aromatics South FGRS Available for Operation and/or in operation 95% of the time;</p> <p>(8) the Subparagraph A12.b.iv requirement to have three Compressors in the Aromatics North/Aromatics South FGRS Available for Operation and/or in operation at all times; and</p> <p>(9) the Subparagraph A12.b.iv requirement that when Compressor C-69031 is shut down for planned maintenance, all other Compressors in the Aromatics North/Aromatics South FGRS must be Available for Operation and/or in operation</p>	
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<p>111.f. <u>Violation of Paragraph A15.</u> Failure to comply with the Net Heating Value in the Combustion Zone Gas (“NHV<sub>cz</sub>”) standard in Paragraph A15</p>	<table border="0"> <tr> <td style="vertical-align: top;">On a per Flare basis, hours per calendar <u>quarter in noncompliance</u></td> <td style="vertical-align: top; text-align: center;">Penalty per hour, or fraction thereof <u>per flare</u></td> </tr> <tr> <td>Hours 0.25–50.0</td> <td style="text-align: center;">\$ 25</td> </tr> <tr> <td>Hours 50.25–100.0</td> <td style="text-align: center;">\$ 75</td> </tr> <tr> <td>Hours over 100.0</td> <td style="text-align: center;">\$ 150</td> </tr> </table> <p>For purposes of calculating the number of hours of noncompliance with the NHV<sub>cz</sub> standard, all 15-minute periods of violation shall be added together to determine the total.</p>	On a per Flare basis, hours per calendar <u>quarter in noncompliance</u>	Penalty per hour, or fraction thereof <u>per flare</u>	Hours 0.25–50.0	\$ 25	Hours 50.25–100.0	\$ 75	Hours over 100.0	\$ 150
On a per Flare basis, hours per calendar <u>quarter in noncompliance</u>	Penalty per hour, or fraction thereof <u>per flare</u>								
Hours 0.25–50.0	\$ 25								
Hours 50.25–100.0	\$ 75								
Hours over 100.0	\$ 150								
<p>111.g. <u>Violation of Paragraph A16.</u> Failure to record and retain any information required to be recorded and retained pursuant to Paragraph A16</p>	<p>\$100 per day</p>								
<p>111.h. <u>Violation of the Deadline for Submission of the Flare Data and Monitoring Systems and Protocol Report required in Paragraph A17.</u> Failure to submit the Paragraph A17 report by the required deadline</p>	<table border="0"> <tr> <td style="vertical-align: top;">Period of delay or <u>noncompliance</u></td> <td style="vertical-align: top; text-align: center;"><u>Penalty per day</u></td> </tr> <tr> <td>Days 1–30</td> <td style="text-align: center;">\$ 300</td> </tr> <tr> <td>Days 31–60</td> <td style="text-align: center;">\$ 400</td> </tr> <tr> <td>Days 61 and later</td> <td style="text-align: center;">\$ 500</td> </tr> </table>	Period of delay or <u>noncompliance</u>	<u>Penalty per day</u>	Days 1–30	\$ 300	Days 31–60	\$ 400	Days 61 and later	\$ 500
Period of delay or <u>noncompliance</u>	<u>Penalty per day</u>								
Days 1–30	\$ 300								
Days 31–60	\$ 400								
Days 61 and later	\$ 500								
<p>111.i. <u>Violation of Paragraph A17 by failing to include all of the information required to be included in the Report.</u> Failure to include in the Report required under Paragraph A17 all of the information that Paragraph A17 requires</p>	<p>\$100 per item of missing information</p>								

<p>111.j. <u>Violation of Paragraph A18, A19, A20, A21, A23, each requirement in the column labeled “Minimum accuracy requirements” in Table 13 of 40 C.F.R. Part 63, Subpart CC (because compliance with these is required by Subparagraph A22.a), or each requirement of 40 C.F.R. § 63.671(a) (because compliance with these is required by Subparagraph A22.a).</u> Failure to timely install the equipment and monitoring systems required by Paragraphs A18–A21 in accordance with the respective, applicable technical specifications in: (1) those Paragraphs or (2) A23; or (3) the requirements in the column labeled “Minimum accuracy requirements” in Table 13 of 40 C.F.R. Part 63, Subpart CC; or (4) the requirements in 40 C.F.R. § 63.671</p>	<p><u>Period of delay or noncompliance, per monitoring system</u></p> <p>Days 1–30 Days 31–60 Days 61 and later</p>	<p><u>Penalty per day per monitoring system</u></p> <p>\$ 750 \$1,250 \$2,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater</p>
<p>111.k. <u>Violation of each of the QA/QC requirements in Table 13 of 40 C.F.R. Part 63, Subpart CC (because compliance with these is required by Subparagraph A22.a).</u> Failure to comply with each of the requirements that have a periodic compliance basis (e.g., “daily,” “weekly,”) in the column labeled “Calibration requirements” in Table 13 of 40 C.F.R. Part 63, Subpart CC</p>	<p><u>Violation of a:</u></p> <p>Daily requirement Weekly requirement Monthly requirement Quarterly requirement Annual requirement Biennial requirement</p>	<p><u>Penalty per day late</u></p> <p>\$ 100 \$ 125 \$ 150 \$ 200 \$ 500 \$1,000</p>

111.l. <u>Violation of Subparagraph A22.b, A22.c, or A22.d or of any requirement of Table 13 of 40 C.F.R. Part 63, Subpart CC not covered by Subparagraphs 111.j. or 111.k.</u> Failure to comply with the requirements of Subparagraph A22.b, A22.c, or A22.d or of any requirement of Table 13 of 40 C.F.R. Part 63, Subpart CC, not covered by Subparagraphs 111.j. or 111.k	<u>Period of Delay or Noncompliance</u>  Days 1–30 Days 31–60 Days 61 and later	<u>Penalty per Day per Requirement</u>  \$ 250 \$ 500 \$1,000
111.m. <u>Violation of Paragraph A24.</u> Failure to comply with a requirement of Paragraph A24	<u>Per monitoring system, number of hours per calendar quarter in violation</u>  0.25–50.0 50.25–100.0 Over 100.0	<u>Penalty per hour per monitoring system</u>  \$ 250 \$ 500 \$1,000
111.n. <u>Violation of Paragraph A25.</u> Failure to comply with a requirement of 40 C.F.R. §§ 63.670 and 63.671 to the extent that the failure is not already subject to a stipulated penalty in Subparagraphs 111.j – 111.l.	<u>Period of Delay or Noncompliance</u>  Days 1–30 Days 31–60 Days 61 and later	<u>Penalty per Day per Requirement per Flare</u>  \$ 250 \$ 500 \$1,000

112. For purposes of Table 1 in Paragraph 111, for a given calendar day, where a failure to comply with the 365-day rolling average limit on Waste Gas flaring at the Refinery required by Subparagraph A4.a.i. of Appendix A of this Decree (and potentially subject to the stipulated penalty provisions of Subparagraph 111.a.) is the result of a failure to have the requisite number of Compressors Available for Operation as required by Subparagraph A12.b. of Appendix A of this Decree (and potentially subject to the stipulated penalty provisions of Subparagraph 111.e.), only the stipulated penalty provision that results in the higher penalty shall be applicable for that calendar day (*i.e.*, stipulated penalties under *both* Subparagraph 111.a. and Subparagraph 111.e. shall not be assessed).



113. Failure to Meet Obligations in the LDAR Provisions in Section V.B.**STIPULATED PENALTY TABLE 2**

<b>Violation</b>	<b>Stipulated Penalty</b>										
113.a. <u>Violation of Paragraph 19.</u> Failure to timely develop and complete the Facility-wide LDAR document required in Paragraph 19 and to update it on an annual basis if needed pursuant to Paragraph 19	<table border="0"> <tr> <td><u>Period of noncompliance</u></td> <td><u>Penalty per day late</u></td> </tr> <tr> <td>1 - 15 days</td> <td>\$ 300</td> </tr> <tr> <td>16 - 30 days</td> <td>\$ 400</td> </tr> <tr> <td>31 days or more</td> <td>\$ 500</td> </tr> </table>	<u>Period of noncompliance</u>	<u>Penalty per day late</u>	1 - 15 days	\$ 300	16 - 30 days	\$ 400	31 days or more	\$ 500		
<u>Period of noncompliance</u>	<u>Penalty per day late</u>										
1 - 15 days	\$ 300										
16 - 30 days	\$ 400										
31 days or more	\$ 500										
113.b. <u>Violation of Paragraph 20.</u> Each failure to perform monitoring at the frequencies set forth in Paragraph 20	\$100 per component per missed monitoring event, not to exceed \$25,000 per month										
113.c. <u>Violation of Paragraph 22.</u> If identified during an LDAR audit through comparative monitoring, each failure to comply with Method 21 (or the AWP, as applicable) in performing LDAR monitoring, as indicated by the comparative monitoring leak ratio calculated under Paragraph 37.c, but only if the auditor identified a leak rate of at least 0.5% per component type in the process unit	<table border="0"> <tr> <td><u>Comparative Monitoring Leak Ratio calculated Under Paragraph 37.c</u></td> <td><u>Penalty per Covered Process Unit</u></td> </tr> <tr> <td><math>\geq 3.0 &lt; 4.0</math></td> <td>\$15,000</td> </tr> <tr> <td><math>\geq 4.0 &lt; 5.0</math></td> <td>\$30,000</td> </tr> <tr> <td><math>\geq 5.0 &lt; 6.0</math></td> <td>\$45,000</td> </tr> <tr> <td><math>\geq 6.0</math></td> <td>\$60,000</td> </tr> </table>	<u>Comparative Monitoring Leak Ratio calculated Under Paragraph 37.c</u>	<u>Penalty per Covered Process Unit</u>	$\geq 3.0 < 4.0$	\$15,000	$\geq 4.0 < 5.0$	\$30,000	$\geq 5.0 < 6.0$	\$45,000	$\geq 6.0$	\$60,000
<u>Comparative Monitoring Leak Ratio calculated Under Paragraph 37.c</u>	<u>Penalty per Covered Process Unit</u>										
$\geq 3.0 < 4.0$	\$15,000										
$\geq 4.0 < 5.0$	\$30,000										
$\geq 5.0 < 6.0$	\$45,000										
$\geq 6.0$	\$60,000										
113.d. <u>Violation of Paragraph 22.</u> Except where paper logs are allowed, each failure to use a monitoring device that is attached to a data logger or equivalent equipment; or each failure, during each monitoring event, to directly electronically record the Screening Value, date, time, identification number of the monitoring equipment, or the identification of the technician in accordance with the requirements of Paragraph 22	\$100 per failure per piece of Covered Equipment, but no greater than \$2,500 per Covered Process Unit per month										
113.e. <u>Violation of Paragraph 22.</u> Each failure to transfer monitoring data to an electronic database on at least a weekly basis in accordance with the requirements of Paragraph 22	\$150 per day for each day that the transfer is late, not to exceed \$25,000 per missed transfer										
113.f. <u>Violation of Paragraph 23.</u> Each failure to conduct and record the calibrations and calibration drift assessments in accordance with the requirements of Paragraph 23	\$100 per missed event										

113.g. <u>Violation of Paragraph 27.</u> For each failure to make an “initial attempt” at repair of a valve in accordance with the requirements of Paragraph 27	\$100 per valve, not to exceed \$10,000 per month.									
113.h. <u>Violation of Paragraph 28.</u> Each failure to timely perform a first attempt at repair as required by Paragraph 28.	\$150 per day for each late day, not to exceed \$1,500 per leak									
113.i. <u>Violation of Paragraph 28.</u> Each failure to timely perform a final attempt at repair as required by Paragraph 28.	<table border="1"> <thead> <tr> <th data-bbox="824 480 1068 575">Equipment <u>type</u></th> <th data-bbox="1076 480 1239 575">Penalty per Component <u>per day late</u></th> <th data-bbox="1247 480 1417 575">Not to <u>Exceed</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="824 617 1068 648">Valves, connectors</td> <td data-bbox="1076 617 1239 648">\$ 300</td> <td data-bbox="1247 617 1417 648">\$ 18,750</td> </tr> <tr> <td data-bbox="824 659 1068 680">Pumps, agitators</td> <td data-bbox="1076 659 1239 680">\$1,200</td> <td data-bbox="1247 659 1417 680">\$ 75,000</td> </tr> </tbody> </table>	Equipment <u>type</u>	Penalty per Component <u>per day late</u>	Not to <u>Exceed</u>	Valves, connectors	\$ 300	\$ 18,750	Pumps, agitators	\$1,200	\$ 75,000
Equipment <u>type</u>	Penalty per Component <u>per day late</u>	Not to <u>Exceed</u>								
Valves, connectors	\$ 300	\$ 18,750								
Pumps, agitators	\$1,200	\$ 75,000								
113.j. <u>Violation of Paragraph 29.</u> Each failure to undertake the drill-and-tap method in accordance with the requirements of Paragraph 29	<table border="1"> <thead> <tr> <th data-bbox="824 701 1133 764">Period of <u>noncompliance</u></th> <th data-bbox="1141 701 1417 806">Penalty per component per day <u>late</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="824 848 1133 879">Between 1 and 15 days</td> <td data-bbox="1141 848 1417 879">\$ 200</td> </tr> <tr> <td data-bbox="824 890 1133 921">Between 16 and 30 days</td> <td data-bbox="1141 890 1417 921">\$ 350</td> </tr> <tr> <td data-bbox="824 932 1133 963">Over 30 days</td> <td data-bbox="1141 932 1417 1058">\$ 500 per day for each day over 30, not to exceed \$37,500</td> </tr> </tbody> </table>	Period of <u>noncompliance</u>	Penalty per component per day <u>late</u>	Between 1 and 15 days	\$ 200	Between 16 and 30 days	\$ 350	Over 30 days	\$ 500 per day for each day over 30, not to exceed \$37,500	
Period of <u>noncompliance</u>	Penalty per component per day <u>late</u>									
Between 1 and 15 days	\$ 200									
Between 16 and 30 days	\$ 350									
Over 30 days	\$ 500 per day for each day over 30, not to exceed \$37,500									
113.k. <u>Violation of Paragraph 30.</u> Each failure to record the information required by Paragraph 30	\$100 per component per item of missed information									
113.l. <u>Violation of Paragraph 32.</u> Each improper placement of a piece of Covered Equipment on the DOR list (i.e., placing a piece of Covered Equipment on the DOR list even though it is feasible to repair it without a process unit shutdown) in violation of the requirements of Paragraph 32	<table border="1"> <thead> <tr> <th data-bbox="824 1194 1068 1289">Equipment <u>Type</u></th> <th data-bbox="1076 1194 1239 1289">Penalty per component <u>per day on list</u></th> <th data-bbox="1247 1194 1417 1289">Not to <u>exceed</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="824 1331 1068 1362">Valves, connectors</td> <td data-bbox="1076 1331 1239 1362">\$ 300</td> <td data-bbox="1247 1331 1417 1362">\$ 37,500</td> </tr> <tr> <td data-bbox="824 1373 1068 1404">Pumps, Agitators</td> <td data-bbox="1076 1373 1239 1404">\$1,200</td> <td data-bbox="1247 1373 1417 1404">\$150,000</td> </tr> </tbody> </table>	Equipment <u>Type</u>	Penalty per component <u>per day on list</u>	Not to <u>exceed</u>	Valves, connectors	\$ 300	\$ 37,500	Pumps, Agitators	\$1,200	\$150,000
Equipment <u>Type</u>	Penalty per component <u>per day on list</u>	Not to <u>exceed</u>								
Valves, connectors	\$ 300	\$ 37,500								
Pumps, Agitators	\$1,200	\$150,000								
113.m. <u>Violation of Subparagraph 32.a.</u> Each failure to comply with the requirement in Subparagraph 32.a that a relevant unit supervisor or person of similar authority sign off on placing a piece of Covered Equipment on the DOR list	\$250 per piece of Covered Equipment									

113.n. <u>Violation of Subparagraph 32.c.</u> Each failure to comply with the 0.10% limit on valves that may be placed on the DOR list in violation of the requirements of Subparagraph 32.c.	\$5,000 per valve								
113.o. <u>Violation of Paragraph 33.</u> Each failure to add a piece of Covered Equipment to the LDAR program in accordance with the requirements of Paragraph 33	\$300 per piece of Covered Equipment (plus an amount, if any due under Subparagraph 113.b. for any missed monitoring for a component that should have been added to the LDAR program)								
113.p. <u>Violation of Paragraph 33.</u> Each failure to remove a piece of Covered Equipment from the LDAR program in violation of Paragraph 33	\$150 per piece of Covered Equipment								
113.q. <u>Violation of Paragraph 34.</u> Each failure to develop a training protocol in accordance with the requirements of Paragraph 34	\$50 per day of noncompliance								
113.r. <u>Violation of Paragraph 34.</u> Each failure to: (1) perform, by the required deadline, initial, refresher, or new personnel training on any individual who requires such training. (This Subparagraph 113.r.(1) is intended to apply when a person who was supposed to be trained by a date certain received no training by that deadline); (2) include in the training program aspects of LDAR that should be included consistent with the requirements of Paragraph 34. (This Subparagraph 113.r.(2) is intended to apply when the training program itself has one or more elements missing that should have been included.)	Penalty for (1): \$1,000 per person per month late  Penalty for (2): \$2,500 per missed item (This penalty is not intended to apply on a “per person” basis nor to increase over time.)								
113.s. <u>Violation of Paragraph 35.</u> Each failure to perform any of the requirements relating to QA/QC in Paragraph 35	\$750 per missed requirement per quarter								
113.t. <u>Violation of Paragraph 36.</u> Each failure to conduct an LDAR audit in accordance with the schedule set forth in Paragraph 36	<table border="0"> <thead> <tr> <th data-bbox="824 1591 1149 1619"><u>Period of noncompliance</u></th> <th data-bbox="1157 1591 1409 1619"><u>Penalty per day</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="824 1661 976 1688">1 – 15 days</td> <td data-bbox="1157 1661 1235 1688">\$300</td> </tr> <tr> <td data-bbox="824 1698 987 1726">16 – 30 days</td> <td data-bbox="1157 1698 1235 1726">\$400</td> </tr> <tr> <td data-bbox="824 1736 1029 1764">31 days or more</td> <td data-bbox="1157 1736 1386 1837">\$500, not to exceed \$ 50,000 per audit</td> </tr> </tbody> </table>	<u>Period of noncompliance</u>	<u>Penalty per day</u>	1 – 15 days	\$300	16 – 30 days	\$400	31 days or more	\$500, not to exceed \$ 50,000 per audit
<u>Period of noncompliance</u>	<u>Penalty per day</u>								
1 – 15 days	\$300								
16 – 30 days	\$400								
31 days or more	\$500, not to exceed \$ 50,000 per audit								

113.u. <u>Violation of Paragraph 36.</u> Each failure to use a third-party auditor or each use of a third-party auditor that is not experienced in LDAR audits, in violation of Paragraph 36	\$25,000 per audit								
113.v. <u>Violation of Paragraph 37.</u> Except for the requirement to undertake Comparative Monitoring, each failure to substantially comply with the LDAR audit requirements in Paragraph 37	\$10,000 per missed requirement, not to exceed \$100,000 per audit								
113.w. <u>Violation of Subparagraphs 37.a.–37.c.</u> Each failure to substantially comply with the audit-related Comparative Monitoring requirements of Subparagraphs 37.a.–37.c.	\$50,000 per audit								
113.x. <u>Violation of Paragraph 39.</u> Each failure to timely submit a Final Corrective Action Plan that substantially conforms to the requirements of Paragraph 39	<table border="1"> <thead> <tr> <th><u>Period of noncompliance</u></th> <th><u>Penalty per day per violation</u></th> </tr> </thead> <tbody> <tr> <td>1 - 15 days</td> <td>\$ 100</td> </tr> <tr> <td>16 - 30 days</td> <td>\$ 250</td> </tr> <tr> <td>31 days or more</td> <td>\$ 500</td> </tr> </tbody> </table> <p>Not to exceed \$50,000 per audit</p>	<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>	1 - 15 days	\$ 100	16 - 30 days	\$ 250	31 days or more	\$ 500
<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>								
1 - 15 days	\$ 100								
16 - 30 days	\$ 250								
31 days or more	\$ 500								
113.y. <u>Violation of Paragraph 39.</u> Each failure to implement a corrective action within 90 days after the LDAR Audit Completion Date or pursuant to the schedule that WRB/P66 must propose pursuant to Subparagraph 39.a. if the corrective action cannot be completed in 90 days	<table border="1"> <thead> <tr> <th><u>Period of noncompliance</u></th> <th><u>Penalty per day per violation</u></th> </tr> </thead> <tbody> <tr> <td>1 - 15 days</td> <td>\$ 500</td> </tr> <tr> <td>16 - 30 days</td> <td>\$ 750</td> </tr> <tr> <td>31 days or more</td> <td>\$1,000</td> </tr> </tbody> </table> <p>Not to exceed \$100,000 per audit</p>	<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>	1 - 15 days	\$ 500	16 - 30 days	\$ 750	31 days or more	\$1,000
<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>								
1 - 15 days	\$ 500								
16 - 30 days	\$ 750								
31 days or more	\$1,000								
113.z. <u>Violation of Paragraph 48.</u> Each failure to timely submit a Certification of Compliance that substantially conforms to the requirements of Paragraph 48	<table border="1"> <thead> <tr> <th><u>Period of noncompliance</u></th> <th><u>Penalty per day per violation</u></th> </tr> </thead> <tbody> <tr> <td>1 - 15 days</td> <td>\$ 100</td> </tr> <tr> <td>16 - 30 days</td> <td>\$ 250</td> </tr> <tr> <td>31 days or more</td> <td>\$ 500</td> </tr> </tbody> </table> <p>Not to exceed \$50,000</p>	<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>	1 - 15 days	\$ 100	16 - 30 days	\$ 250	31 days or more	\$ 500
<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>								
1 - 15 days	\$ 100								
16 - 30 days	\$ 250								
31 days or more	\$ 500								
113.aa. <u>Violation of Paragraph 41.</u> Each failure to install a Low-E Valve or a valve fitted with Low-E Packing when required to do so pursuant to Paragraph 41	\$1,000 per valve required by Subparagraph 41.b or 41.c; \$10,000 per valve required by Subparagraph 41.d.								

114. Failure to Meet Obligations Not Identified in Tables 1 and 2.**STIPULATED PENALTY TABLE 3**

<b>Violation</b>	<b>Stipulated Penalty</b>										
114.a. <u>Violation of Paragraph 52.</u> For failure to meet any requirement of Paragraph 52	\$10,000 per month per waste management unit										
114.b. <u>Violation of Subparagraph 54.a.</u> For failure to include new benzene waste streams in the Refinery's waste stream inventory or TAB report	<table border="1"> <thead> <tr> <th><u>Waste Stream Missed</u></th> <th><u>Penalty</u></th> </tr> </thead> <tbody> <tr> <td>&lt; 0.03 Mg/yr</td> <td>\$ 250</td> </tr> <tr> <td>Between 0.03 and 0.99 Mg/yr</td> <td>\$ 1,000</td> </tr> <tr> <td>Between 0.1 and 0.49 Mg/yr</td> <td>\$ 5,000</td> </tr> <tr> <td>&gt; 0.5 Mg/ yr</td> <td>\$10,000</td> </tr> </tbody> </table>	<u>Waste Stream Missed</u>	<u>Penalty</u>	< 0.03 Mg/yr	\$ 250	Between 0.03 and 0.99 Mg/yr	\$ 1,000	Between 0.1 and 0.49 Mg/yr	\$ 5,000	> 0.5 Mg/ yr	\$10,000
<u>Waste Stream Missed</u>	<u>Penalty</u>										
< 0.03 Mg/yr	\$ 250										
Between 0.03 and 0.99 Mg/yr	\$ 1,000										
Between 0.1 and 0.49 Mg/yr	\$ 5,000										
> 0.5 Mg/ yr	\$10,000										
114.c. <u>Violation of Subparagraph 54.b.</u> For failure to timely implement the post-entry review required in Subparagraph 54.b. in accordance with the requirements of Subparagraph 54.b.	\$2,500 per month										
114.d. <u>Violation of Paragraph 55.</u> For failure to: (1) perform, by the required deadline, initial, refresher, or new personnel training on any individual who requires such training. (This Subparagraph 114.d.(1) is intended to apply when a person who was supposed to be trained by a date certain received no training by that deadline); (2) include in the training program all aspects of BWON that should be included consistent with the requirements of Paragraph 55. (This Subparagraph 114.d.(2) is intended to apply when the training program itself has one or more elements missing that should have been included.)	<p>Penalty for (1): \$1,000 per person per month late</p> <p>Penalty for (2): \$2,500 per missed item (This penalty is not intended to apply on a "per person" basis nor to increase over time.)</p>										
114.e. <u>Violation of Paragraph 55.</u> For failure to timely develop the training protocol or standard operating procedures required in Paragraph 55	\$3,500 per month or partial month										
114.f. <u>Violation of Paragraph 58.</u> For failure to timely perform the laboratory audits in accordance with the requirements of Paragraph 58	\$5,000 per month per audit										
114.g. <u>Violation of Paragraph 60.</u> For failure to comply with each requirement of Paragraph 60	\$1,000 per incident per day of non-compliance										

114.h. <u>Violation of Paragraph 61.</u> For failure to timely comply with each requirement of Paragraph 61 in accordance with the requirements of Paragraph 61	<table border="1"> <thead> <tr> <th data-bbox="824 197 1133 268"><u>Period of delay or noncompliance</u></th> <th data-bbox="1141 197 1541 268"><u>Penalty per day</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="824 302 1133 338">Days 1–30</td> <td data-bbox="1141 302 1541 338">\$ 1,250</td> </tr> <tr> <td data-bbox="824 342 1133 378">Days 31–60</td> <td data-bbox="1141 342 1541 378">\$ 3,000</td> </tr> <tr> <td data-bbox="824 382 1133 417">Days 61 and later</td> <td data-bbox="1141 382 1541 594">\$ 5,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater</td> </tr> </tbody> </table>	<u>Period of delay or noncompliance</u>	<u>Penalty per day</u>	Days 1–30	\$ 1,250	Days 31–60	\$ 3,000	Days 61 and later	\$ 5,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater		
<u>Period of delay or noncompliance</u>	<u>Penalty per day</u>										
Days 1–30	\$ 1,250										
Days 31–60	\$ 3,000										
Days 61 and later	\$ 5,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater										
114.i. <u>Violation of Subparagraph 62.a.</u> For failure to timely comply with each requirement of Subparagraph 62.a. in accordance with the requirements of Subparagraph 62.a.	\$500 per month per drain not inspected										
114.j. <u>Violation of Subparagraph 62.b.</u> For failure to timely comply with each requirement of Subparagraph 62.b. in accordance with the requirements of Subparagraph 62.b.	\$500 per week per vent not monitored										
114.k. <u>Violation of Subparagraph 62.d.</u> For failure to timely comply with each requirement of Subparagraph 62.d. in accordance with the requirements of Subparagraph 62.d.	\$200 per component per day late in conducting the monitoring, not to exceed \$50,000 per month										
114.l. <u>Violation of Paragraph 63.</u> For failure to limit the EOL uncontrolled benzene quantity to 6 Megagrams in a calendar year	<table border="1"> <thead> <tr> <th data-bbox="824 1152 1133 1188"><u>EOL Quantity</u></th> <th data-bbox="1141 1152 1541 1188"><u>Penalty</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="824 1222 1133 1257">6.01 – 7.00</td> <td data-bbox="1141 1222 1541 1257">\$ 2,500 per 0.10 Mg</td> </tr> <tr> <td data-bbox="824 1262 1133 1297">7.01 – 9.00</td> <td data-bbox="1141 1262 1541 1297">\$25,000 + (\$1,500 per 0.10 Mg)</td> </tr> <tr> <td data-bbox="824 1302 1133 1337">9.01 – 12.00</td> <td data-bbox="1141 1302 1541 1337">\$55,000 + (\$1,000 per 0.10 Mg)</td> </tr> <tr> <td data-bbox="824 1341 1133 1377">12.01 and over</td> <td data-bbox="1141 1341 1541 1377">\$85,000 + (\$ 750 per 0.10 Mg)</td> </tr> </tbody> </table> <p data-bbox="824 1411 1541 1476">For example, an EOL of 10.56 Mg would result in a penalty of: [\$55,000 + (\$1,000 x 16)] = \$71,000</p>	<u>EOL Quantity</u>	<u>Penalty</u>	6.01 – 7.00	\$ 2,500 per 0.10 Mg	7.01 – 9.00	\$25,000 + (\$1,500 per 0.10 Mg)	9.01 – 12.00	\$55,000 + (\$1,000 per 0.10 Mg)	12.01 and over	\$85,000 + (\$ 750 per 0.10 Mg)
<u>EOL Quantity</u>	<u>Penalty</u>										
6.01 – 7.00	\$ 2,500 per 0.10 Mg										
7.01 – 9.00	\$25,000 + (\$1,500 per 0.10 Mg)										
9.01 – 12.00	\$55,000 + (\$1,000 per 0.10 Mg)										
12.01 and over	\$85,000 + (\$ 750 per 0.10 Mg)										
114.m. <u>Violation of the Deadline for the Initial Submission Required by Paragraph 64.</u> For failure to submit the Wood River CD EOL Sampling Plan by the required deadline	\$10,000 per month or partial month										
114.n. <u>Violation of the Deadline for Possible Subsequent Submission(s) Required by Paragraph 64.</u> For failure to submit an updated/revised Wood River CD EOL Sampling Plan (if required), by the required deadline	\$3,500 per month or partial month										

<p>114.o. <u>Violation of Paragraph 64 by Failing to Include Specific Information.</u> For failure to include in the Wood River CD EOL Sampling Plan:  <i>(1)</i> a waste stream that was required to be included;  <i>(2)</i> any item other than the item identified in <i>(1)</i> above</p>	<p>Penalty for <i>(1)</i>: if the waste stream that was not included was not sampled when it should have been sampled, \$6,000 per waste stream per quarter not sampled</p> <p>Penalty for <i>(2)</i>: \$1,000 per item of missing information other than the item identified in <i>(1)</i></p>								
<p>114.p. <u>Violation of Subparagraph 64.d or 65.b.</u> For failure to timely conduct sampling in accordance with any requirement in Subparagraphs 64.d or 65.b.</p>	<p>\$2,000 per missed sampling event</p> <p>If a missed sampling event may result in a stipulated penalty under both Subparagraphs 114.o.<i>(1)</i> and 114.p, EPA shall seek a stipulated penalty under only one of those two Subparagraphs.</p>								
<p>114.q. <u>Violation of Subparagraph 65.a.i.</u> For failure to conduct daily sampling in accordance with the requirements of Subparagraph 65.a.i.</p>	<p>\$250 per missed sampling event</p>								
<p>114.r. <u>Violation of Subparagraph 65.a.ii.</u> For failure to conduct weekly sampling in accordance with requirements of Subparagraph 65.a.ii.</p>	<p>\$500 per missed sampling event</p>								
<p>114.s. <u>Violation of the Deadline for the Submission Required by Paragraph 67.</u> For failure to develop a BWON compliance assurance plan by the required deadline</p>	<p>\$5,000 per month or partial month</p>								
<p>114.t. <u>Violation of Paragraph 67 by Failing to Include Specific Information.</u> For failure to include in the BWON compliance assurance plan:  <i>(1)</i> the correct cause(s) of the elevated benzene quantities;  <i>(2)</i> any item other than the item identified in <i>(1)</i> above</p>	<p>Penalty for <i>(1)</i>: \$5,000 per month or partial month</p> <p>Penalty for <i>(2)</i>: \$1,000 per item of missing information other than the item identified in <i>(1)</i></p>								
<p>114.u. <u>Violation of Paragraph 67.</u> For failure to timely implement the compliance assurance plan required by Paragraph 67 in accordance with the schedule contained in the plan</p>	<table border="0"> <thead> <tr> <th style="text-align: left;"><u>Period of Delay or Noncompliance</u></th> <th style="text-align: left;"><u>Penalty per Day</u></th> </tr> </thead> <tbody> <tr> <td>Days 1–30</td> <td>\$1,250</td> </tr> <tr> <td>Days 31–60</td> <td>\$3,000</td> </tr> <tr> <td>Days 61 and later</td> <td>\$5,000 or an amount equal to 1.2 times the economic benefit of noncompliance</td> </tr> </tbody> </table>	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day</u>	Days 1–30	\$1,250	Days 31–60	\$3,000	Days 61 and later	\$5,000 or an amount equal to 1.2 times the economic benefit of noncompliance
<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day</u>								
Days 1–30	\$1,250								
Days 31–60	\$3,000								
Days 61 and later	\$5,000 or an amount equal to 1.2 times the economic benefit of noncompliance								

114.v. <u>Violation of Paragraph 69.</u> For failure to timely retain a third party or submit a plan to EPA for implementing the third party's recommendations or for implementing the plan	\$5,000 per month or partial month	
114.w. <u>Violation of Paragraph 69.</u> For failure to timely implement the requirements of Paragraph 69 in accordance with the requirements of Paragraph 69	\$1,000 per week, per drain	
114.x. <u>Violation of Paragraph 71.</u> For failure to comply with the requirements of Paragraph 71 for carbon canisters	\$1,000 per incident per day of non-compliance	
114.y. <u>Violation of Subparagraph 72.b.</u> For failure to timely conduct sampling in accordance with the requirements of Subparagraph 72.b.	\$1,000 per missed collection per missed monitoring location	
114.z. <u>Violation of Subparagraph 72.c.</u> For failure to timely conduct a root cause analysis in accordance with Subparagraph 72.c.	\$5,000 per month or partial month	
114.aa. <u>Violation of Subparagraph 72.c.</u> For failure to timely implement corrective action consistent with 40 C.F.R. §§ 63.658(g) and (h), as required by Subparagraph 72.c.	<u>Period of delay or noncompliance</u>	<u>Penalty per day</u>
	Days 1–30	\$ 1,250
	Days 31–60	\$ 3,000
	Days 61 and later	\$ 5,000
114.bb. <u>Violation of Paragraph 73.</u> For failure to timely comply with each requirement of Paragraph 73 in accordance with the requirements of Paragraph 73	<u>Period of delay or noncompliance</u>	<u>Penalty per day</u>
	Days 1–30	\$ 1,250
	Days 31–60	\$ 3,000
	Days 61 and later	\$ 5,000
114.cc. <u>Violation of the Deadline for Submission of the CEMS O&amp;M Plan required in Paragraph 75.</u> For failure to submit a CEMS O&M Plan by the required deadline in Paragraph 75	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day</u>
	Days 1–30	\$ 200
	Days 31–60	\$1,000
	Days 61 and later	\$2,000



<p>114.dd. <u>Violation of Paragraph 75 for Failing to Include Specific Information.</u> For failure to include in the CEMS O&amp;M Plan: (i) the CEMS training element set forth in Paragraph 76; (ii) the CEMS testing and calibration element set forth in Paragraph 77; (iii) the preventive maintenance program set forth in Paragraph 79.a; (iv) the QA/QC program required in Paragraph 79.b; and (v) the repair program required in Paragraph 79.c</p>	<p>\$3,500 per month or partial month per element</p>								
<p>114.ee. <u>Violation of Paragraph 76.</u> For failure to:  <i>(1)</i> perform, by the required deadline, initial, refresher, or new personnel training on any individual who requires such training. (This Subparagraph 114.ee.<i>(1)</i> is intended to apply when a person who was supposed to be trained by a date certain received no training by that deadline)  <i>(2)</i> include in the CEMS training program all aspects that should be included consistent with the requirements of Paragraph 76. (This Subparagraph 114.ee.<i>(2)</i> is intended to apply when the training program itself has one or more elements missing that should have been included.)</p>	<p>Penalty for <i>(1)</i>: \$1,000 per person per month late   Penalty for <i>(2)</i>: \$2,500 per missed item (This penalty is not intended to apply on a “per person” basis nor to increase over time.)</p>								
<p>114.ff. <u>Violation of Paragraph 79.</u> For failure to implement the preventive maintenance program, a QA/QC program or a repair program in accordance with Paragraph 79</p>	<table border="1"> <thead> <tr> <th data-bbox="821 1190 1133 1262"><u>Period of Delay or Noncompliance</u></th> <th data-bbox="1140 1190 1544 1262"><u>Penalty per Day</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="821 1295 1133 1331">Days 1–30</td> <td data-bbox="1140 1295 1544 1331">\$ 500</td> </tr> <tr> <td data-bbox="821 1339 1133 1375">Days 31–60</td> <td data-bbox="1140 1339 1544 1375">\$1,000</td> </tr> <tr> <td data-bbox="821 1383 1133 1419">Days 61 and later</td> <td data-bbox="1140 1383 1544 1419">\$2,000</td> </tr> </tbody> </table>	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day</u>	Days 1–30	\$ 500	Days 31–60	\$1,000	Days 61 and later	\$2,000
<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day</u>								
Days 1–30	\$ 500								
Days 31–60	\$1,000								
Days 61 and later	\$2,000								
<p>114.gg. <u>Violation of Subparagraph 81.b.</u> For failure to prepare a CEMS Root Cause Analysis and Corrective Action Report in accordance with the requirements of Subparagraph 81.b.</p>	<p>\$5,000 per month or partial month, per Report</p>								

114.hh. <u>Violation of Subparagraph 81.c.</u> For failure to undertake and complete CEMS corrective action(s) in accordance with the requirements of Subparagraph 81.c.	<table border="1"> <thead> <tr> <th data-bbox="821 203 1133 268"><u>Period of Delay or Noncompliance</u></th> <th data-bbox="1140 203 1544 268"><u>Penalty per Day</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="821 310 1133 342">Days 1–30</td> <td data-bbox="1140 310 1544 342">\$1,250</td> </tr> <tr> <td data-bbox="821 350 1133 382">Days 31–60</td> <td data-bbox="1140 350 1544 382">\$3,000</td> </tr> <tr> <td data-bbox="821 390 1133 422">Days 61 and later</td> <td data-bbox="1140 390 1544 512">\$5,000 or an amount equal to 1.2 times the economic benefit of noncompliance</td> </tr> </tbody> </table>	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day</u>	Days 1–30	\$1,250	Days 31–60	\$3,000	Days 61 and later	\$5,000 or an amount equal to 1.2 times the economic benefit of noncompliance
<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day</u>								
Days 1–30	\$1,250								
Days 31–60	\$3,000								
Days 61 and later	\$5,000 or an amount equal to 1.2 times the economic benefit of noncompliance								
114.ii. <u>Violation of Subparagraph 81.d.</u> For failure to retain a third party or have the third party prepare a report in accordance with the requirements of Subparagraph 81.d.	\$5,000 per month or partial month								
114.jj. <u>Violation of Paragraph 84 or 85.</u> For failure to submit an application for a permit in accordance with the requirements of Paragraph 84 or 85	<table border="1"> <thead> <tr> <th data-bbox="821 684 1133 749"><u>Period of Delay or Noncompliance</u></th> <th data-bbox="1140 684 1544 749"><u>Penalty per Day</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="821 791 1133 823">Days 1–30</td> <td data-bbox="1140 791 1544 823">\$ 500</td> </tr> <tr> <td data-bbox="821 831 1133 863">Days 31–60</td> <td data-bbox="1140 831 1544 863">\$1,500</td> </tr> <tr> <td data-bbox="821 871 1133 903">Days 61 and later</td> <td data-bbox="1140 871 1544 903">\$3,000</td> </tr> </tbody> </table>	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day</u>	Days 1–30	\$ 500	Days 31–60	\$1,500	Days 61 and later	\$3,000
<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day</u>								
Days 1–30	\$ 500								
Days 31–60	\$1,500								
Days 61 and later	\$3,000								
114.kk. <u>Violation of requirements related to reports, plans, or other deliverables.</u> For failure to timely submit reports, plans or other deliverables in accordance with the requirements of any Paragraph or Subparagraph of this Decree (including but not limited to the Paragraphs and Subparagraphs of Section VIII); provided however, that any report, plan, or other deliverable that has a specific stipulated penalty associated with it shall be assessed stipulated penalties under the specific stipulated penalty provision, not this catch-all provision	\$5,000 per month per report, plan, or other deliverable.								

115. SEP Non-Compliance.

a. If WRB/P66 fails to satisfactorily complete the Supplemental Environmental Project (“SEP”) in Section VII by the later of (i) the deadline in Paragraph 91 or (ii) the extension reached by the Parties pursuant to Paragraph 91, WRB/P66 shall pay a stipulated penalty of \$550,000 less any amount that EPA in its unreviewable discretion determines was expended in a manner consistent with the Consent Decree.

b. If WRB/P66 fails to implement the SEP, or halts or abandons work on the SEP, WRB/P66 shall pay a stipulated penalty of \$600,000. The penalty under this Subparagraph shall accrue as of the date specified for completing the SEP or the date performance ceases, whichever is earlier.

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

117. Stipulated Penalties Payment Due Date. Stipulated penalties shall be paid no later than 60 days after receipt of a written demand by the United States unless the demand is disputed through compliance with the requirements of the dispute resolution provisions of this Decree. Prior to sending a written demand, the United States will provide Illinois with a reasonable opportunity for review and comment.

118. Contents of Demand for Stipulated Penalties. A written demand for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates, the stipulated penalty amount that is being demanded for each violation (as can be best estimated), the calculation method underlying the demand, and the grounds upon which the demand is based. Prior to issuing a written demand for stipulated penalties, the United States, after notifying Illinois and providing an opportunity for consultation, may, in its unreviewable discretion, contact WRB/P66 for informal discussion of matters that the United States believes may merit stipulated penalties.

119. Stipulated Penalties Accrual. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the

violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

120. Pre-Entry Obligations. Obligations of WRB/P66 under this Consent Decree to perform actions scheduled to occur before the Date of Entry will be legally enforceable only on and after the Date of Entry. Liability for stipulated penalties, if applicable, will accrue for violations of such obligations and payment of such stipulated penalties may be demanded, as provided in Paragraph 118, by the United States, after notifying Illinois and providing an opportunity for consultation; provided however, that any stipulated penalties that may have accrued before the Date of Entry may not be collected unless and until this Consent Decree is entered by the Court.

121. Apportionment of Stipulated Penalties. 70% of stipulated penalties shall be paid to the United States in the manner set forth in Paragraph 122 and 30% of stipulated penalties shall be paid to the State of Illinois in the manner set forth in Paragraph 123.

122. Manner of Payment of Stipulated Penalties to the United States. Stipulated penalties owing to the United States of under \$10,000 shall be paid by check and made payable to the “U.S. Department of Justice,” referencing DOJ Number 90-5-2-1-06722/6 and delivered to the U.S. Attorney’s Office in the Southern District of Illinois, 9 Executive Dr., Fairview Heights, IL 62208. Stipulated penalties owing to the United States of \$10,000 or more shall be paid in the manner set forth in Section IX of this Decree (Civil Penalty). All transmittal correspondence shall state that the payment is for stipulated penalties, shall identify the violations to which the payment relates, and shall include the same identifying information required by Paragraph 105, 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.

123. Manner of Payment of Stipulated Penalties to the State of Illinois. Payment to Illinois shall be made by certified or corporate check made payable to the “Illinois Environmental Protection Agency” for deposit into the Environmental Protection Trust (“EPTF”) and shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

The name and number of the case shall appear on the check. A copy of the certified or corporate check and the transmittal letter shall be sent to:

Chief, Environmental Bureau  
Illinois Attorney General’s Office  
500 South Second Street  
Springfield, Illinois 62706

124. Stipulated Penalties Dispute. Stipulated penalties shall continue to accrue as provided in Paragraph 119, during any dispute resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, WRB/P66 shall pay accrued penalties determined to be owing, together with interest, to the United States and Illinois within 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 prevail in whole or in part, WRB/P66 shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court’s decision or order, except as provided in Subparagraph 124.c., below.

c. If the District Court's decision is appealed, WRB/P66 shall pay all accrued penalties determined to be owing, together with interest, within 15 business days of receiving the final appellate court decision.

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

126. If WRB/P66 fails to pay stipulated penalties according to the terms of this Consent Decree, WRB/P66 shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or Illinois from seeking any remedy otherwise provided by law for WRB/P66's failure to pay any stipulated penalties.

127. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and Illinois for WRB/P66's violation of this Consent Decree or applicable law. In addition to injunctive relief or stipulated penalties, the United States, in consultation with Illinois, may seek mitigating emissions reductions equal to or greater than the excess amounts emitted if the violations result in excess emissions. WRB/P66 reserves the right to oppose the United States' request for mitigating emission reductions. WRB/P66 shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

## **XI. FORCE MAJEURE**

128. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of WRB/P66, of any entity controlled by WRB/P66, or of WRB/P66’s contractors, that delays or prevents the performance of any obligation under this Consent Decree despite WRB/P66’s best efforts to fulfill the obligation. The requirement that WRB/P66 exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include WRB/P66’s financial inability to perform any obligation under this Consent Decree.

129. 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, WRB/P66 shall notify EPA, with a copy to Illinois, in writing not later than 20 business days after the time that WRB/P66 first knew that the event might cause a delay. In the written notice, WRB/P66 shall specifically reference this Paragraph 129 and shall provide an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; WRB/P66’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 WRB/P66, such event may cause or contribute to an endangerment to public health, welfare or the environment. WRB/P66 shall be deemed to know of any circumstance of which WRB/P66, any entity controlled by WRB/P66, or WRB/P66’s contractors knew or should have known. WRB/P66 shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. The written notice required by this

Paragraph shall be effective upon the mailing of the same by overnight mail or by certified mail, return receipt requested, to EPA in the manner set forth in Section XVI of this Decree (Notices).

130. Failure by WRB/P66 to substantially comply with the notice requirements of Paragraph 129 will render this Section XI (Force Majeure) voidable by the United States as to the specific event for which WRB/P66 has failed to comply with such notice requirement, and if voided, is of no effect as to the particular event involved.

131. If EPA, after notifying Illinois and providing an opportunity for consultation, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify WRB/P66 in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

132. If EPA, after notifying Illinois and providing an opportunity for consultation, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or if the EPA and WRB/P66 fail to agree on the length of the delay attributable to the Force Majeure event, EPA will notify WRB/P66 in writing of its decision.

133. If WRB/P66 elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than 45 days after receipt of EPA's notice. In any such proceeding, WRB/P66 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 WRB/P66 complied with the requirements of Paragraphs 128 and 129. If WRB/P66 carries this burden, the delay at issue shall be deemed not to be a violation by WRB/P66 of the affected obligation of this Consent Decree identified to EPA and the Court.

## **XII. DISPUTE RESOLUTION**

134. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

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

135. 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 one Party sends the other Party a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The United States always shall be a necessary Party to a dispute. The period of informal negotiations shall not exceed 60 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after notifying Illinois and providing an opportunity for consultation, shall be considered binding unless, within 30 days after the United States has notified WRB/P66 of the conclusion of the informal negotiation period, WRB/P66 invokes formal dispute resolution procedures set forth below.

136. Formal Dispute Resolution. WRB/P66 shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States, with a copy to the State of Illinois, a written Statement of Position regarding the matter in

dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting WRB/P66's position and any supporting documentation relied upon by WRB/P66.

137. The United States, after a reasonable opportunity for review and comment by Illinois, shall serve its Statement of Position within 45 days of receipt of WRB/P66'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 WRB/P66 unless WRB/P66 files a motion for judicial resolution of the dispute in accordance with the following Paragraph.

138. WRB/P66 may seek judicial review of the dispute by filing with the Court and serving on the United States, with a copy to Illinois, a motion requesting judicial resolution of the dispute. The motion must be filed within 45 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of WRB/P66'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.

139. The United States, after a reasonable opportunity for review and comment by Illinois, shall respond to WRB/P66's motion within the time period allowed by the Local Rules of this Court. WRB/P66 may file a reply memorandum, to the extent permitted by the Local Rules.

140. Standard of Review. In all disputes arising under the Consent Decree, WRB/P66 shall bear the burden of demonstrating that its position complies with this Consent

Decree and the CAA and that WRB/P66 is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and WRB/P66 reserves the right to argue to the contrary.

141. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of WRB/P66 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 124. If WRB/P66 does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties). As part of the resolution of any dispute under this Section, the Parties, by agreement, or the Court, by order, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Decree to account for the delay in work that occurred as a result of the dispute resolution process. WRB/P66 shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extension or modified schedule.

**B. For Disputes Arising Under Subparagraph A5.c. of Appendix A**

142. For disputes arising under Subparagraph A5.c. of Appendix A, the provisions of this Subsection XII.B shall apply if WRB/P66 invokes the accelerated dispute resolution as

allowed by Subparagraph A.5.c. Paragraphs 135–141 are incorporated herein by reference except for the following changes:

Reference	Instead Of	Use
Para. 135; 5 <sup>th</sup> Sentence	60 days	15 days
Para. 135; 6 <sup>th</sup> Sentence	30 days	10 days
Para. 137; 1 <sup>st</sup> Sentence	45 days	15 days
Para. 138; 2 <sup>nd</sup> Sentence	45 days	15 days
Para.139; 1 <sup>st</sup> Sentence	“within the time period allowed by the Local Rules of this Court” for responses to dispositive motions	“within 21 days”

143. If a dispute under Subparagraph A5.c. comes before this Court for disposition, both Parties jointly shall advise the Court that time is of the essence.

### **XIII. INFORMATION COLLECTION AND RETENTION**

144. The United States and Illinois and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Wood River Refinery, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States and Illinois in accordance with the terms of this Consent Decree;
- c. obtain documentary evidence, including photographs and similar data; and
- d. assess WRB/P66’s compliance with this Consent Decree.

145. Except for data recorded by any video camera that may be required pursuant to Paragraph A20 of Appendix A, until one year after the termination of this Consent Decree, WRB/P66 shall retain all non-identical copies of all documents, records, or other information

(including documents, records, or other information in electronic form) in its possession or control that directly relate to WRB/P66's performance of its obligations under this Consent Decree. Except for data recorded by any video camera that may be required pursuant to Paragraph A20 of Appendix A, until one year after termination of this Consent Decree, WRB/P66 shall instruct its contractors and agents to preserve all documents, records, or other information, regardless of storage medium (*e.g.*, paper or electronic) in its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, that demonstrate or document WRB/P66's compliance or non-compliance with the obligations of this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or Illinois, WRB/P66 shall provide copies of any documents, records, or other information required to be maintained under this Paragraph. WRB/P66 shall retain the data recorded by any video camera required pursuant to Paragraph A20 of Appendix A for one year from the date of recording.

146. Except for emissions data, WRB/P66 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 and/or under 5 ILCS 140/7(1)(g), 415 ILCS 5/7, and 35 Ill. Admin. Code Part 130. As to any information that WRB/P66 seeks to protect as CBI, WRB/P66 shall follow the procedures set forth in 40 C.F.R. Part 2 and 2 Ill. Adm. Code 1828.401, 5 ILCS 140/7(1)(g), 415 ILCS 5/7, and 35 Ill. Admin. Code Part 130.

147. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or Illinois pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or

obligation of WRB/P66 to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

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

148. Definitions. For purposes of this Section XIV, the following definitions apply:

- a. “Hazardous Air Pollutants” or “HAPs” shall have the meaning set forth in 42 U.S.C. § 7412(b)(1).
- b. “PSD/NNSR Requirements” shall mean the Prevention of Significant Deterioration and Non-Attainment New Source Review requirements found in the following:
  - i. 42 U.S.C. § 7475;
  - ii. 40 C.F.R. §§ 52.21(a)(2)(iii) and 52.21(j)–52.21(r)(5);
  - iii. 42 U.S.C. §§ 7502(c)(5), 7503(a)–(c);
  - iv. 40 C.F.R. Part 51, Appendix S, Part IV, Conditions 1–4;
  - v. any applicable, federally enforceable state or local regulation that implements, adopts, or incorporates the federal provisions cited in this Subparagraph; and
  - vi. any Title V permit requirement that implements, adopts, or incorporates the federal, or federally enforceable state, provisions cited in this Subparagraph.

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

150. Resolution of Claims Alleged in Notices and Findings of Violations (“NOV/FOVs”). Entry of this Consent Decree shall resolve the civil claims of the United States and Illinois for the violations that occurred through the Date of Lodging of the Consent Decree as alleged in the 2014 NOV/FOVs. The 2014 NOV/FOVs are attached in Appendix D to this Consent Decree.

151. Resolution of Claims for Violating PSD/NNSR Requirements at the Covered Flares. With respect to emissions of H<sub>2</sub>S, SO<sub>2</sub>, VOCs, and CO from the Covered Flares, entry of this Consent Decree shall resolve the civil claims of the United States and Illinois (as to the provisions the State has authority to enforce) against WRB/P66 for violations of the PSD/NNSR Requirements resulting from construction or modification from the date of the pre-Lodging construction or modification through the Date of Lodging.

152. Resolution of Claims under Listed Regulations at the Covered Flares. With respect to emissions of the following pollutants from the following flares, entry of this Consent Decree shall resolve the civil claims of the United States and Illinois (as to the provisions the State has authority to enforce) against WRB/P66 for violations of the following regulations (and any applicable state regulations that implement, adopt, or incorporate any of the following regulations) that occurred from the date of accrual through the Date of Lodging:

<b>Flares</b>	<b>Pollutants</b>	<b>Regulation(s)</b>
Covered Flares	VOCs and HAPs	<p>40 C.F.R. § 60.11(d);</p> <p>40 C.F.R. §§ 60.18(c)(1)-(2), (c)(3)(ii), (c)(4), (d), (e) and (f);</p> <p>40 C.F.R. § 63.6(e)(1)(i);</p> <p>40 C.F.R. §§ 63.11(b)(1), (3)-(5), (6)(ii), and (7);</p> <p>40 C.F.R. §§ 60.482-10(d), 60.482-10a(d), but only to the extent that these provisions require compliance with 40 C.F.R. §§ 60.18(c)(3)(ii) and (d);</p> <p>40 C.F.R. §§ 60.482-10(e), 60.482-10a(e), but only to the extent that these provisions relate to flares;</p> <p>40 C.F.R. §§ 60.592(a), 60.592a(a), but only to the extent that these provisions: (a) relate to flares, and (b) require compliance with 40 C.F.R. §§ 60.18(c)(3)(ii) and (d);</p> <p>40 C.F.R. § 63.643(a)(1), but only to the extent that this provision: (a) relates to flares, and (b) requires compliance with 40 C.F.R. §§ 63.11(b)(1) and (b)(6)(ii);</p> <p>40 C.F.R. § 63.648(a), but only to the extent that this provision: (a) relates to flares, and (b) requires compliance with 40 C.F.R. §§ 60.18(c)(3)(ii) and (d);</p> <p>Table 6 of 40 C.F.R. Part 63, Subpart CC, but only to the extent that Table 6 requires compliance with 40 C.F.R. § 63.6(e)(1)(i);</p> <p>40 C.F.R. § 63.1566(a)(1)(i) and Table 15 of Part 63, Subpart UUU, but only to the extent that Table 15: (a) relates to flares, and (b) requires compliance with 40 C.F.R. §§ 63.11(b)(1) and (b)(6)(ii);</p> <p>40 C.F.R. § 63.1566(a)(1)(i) and Table 44 of Part 63, Subpart UUU, but only to the extent that Table 44 requires compliance with 40 C.F.R. § 63.6(e)(1).</p>
Covered Flares	SO <sub>2</sub> and H <sub>2</sub> S	40 C.F.R. Part 60, Subparts A, J, and Ja



153. Resolution of Claims Related to Flaring Incidents on January 1 and January 3–4, 2018. Entry of this Consent Decree shall resolve the civil claims of the United States and Illinois (as to the provisions the State has the authority to enforce) against WRB/P66 for violations of the regulation and permit conditions set forth in Subparagraphs a–b below that occurred on January 1, January 3, and January 4, 2018:

- a. 35 Ill. Adm. Code 214.301; and
- b. Conditions 1.4–1.a and 1.4–1.c of Construction Permit No. 10060051, as revised on November 15, 2016.

154. Resolution of LDAR Violations. With respect to Covered Equipment, entry of this Consent Decree shall resolve the civil claims of the United States and Illinois (as to the provisions the State has authority to enforce) against WRB/P66 for violations of the regulations set forth in Subparagraphs a–d below that occurred from the date of accrual through the Date of Lodging of this Consent Decree at each Covered Process Unit at the Wood River Refinery:

- a. 40 C.F.R. Part 60, Subparts GGG and GGGa;
- b. 40 C.F.R. Part 61, Subparts J and V;
- c. The Equipment Leak Standards of 40 C.F.R. Part 63, Subpart CCC; and
- d. Any applicable, federally enforceable state or local regulation that implements, adopts, or incorporates the federal provisions cited in Subparagraphs a–c.

155. Resolution of BWON Violations. Entry of this Consent Decree shall resolve the civil claims of the United States and Illinois (as to the provisions the State has the authority to enforce) against WRB/P66 for violations of the regulations set forth in Subparagraphs a–b below that occurred from the date of accrual through December 31, 2014:

- a. 40 C.F.R. Part 61, Subpart FF; and
- b. Any applicable, federally enforceable state or local regulation that implements, adopts, or incorporates the federal provisions cited in Subparagraph a.

156. Resolution of Title V Violations. Entry of this Consent Decree shall resolve the civil claims of the United States against WRB/P66 for the violations of Sections 502(a), 503(c), and 504(a) of the CAA, 42 U.S.C. §§ 7661a(a), 7661b(c), 7661c(a), and of 40 C.F.R. §§ 70.1(b), 70.5(a) and (b), 70.6(a), 70.6(c), and 70.7(b) and Section 39.5 of the Illinois Environmental Protection Act, that are based upon the violations resolved by Paragraphs 151–155 for the time frames set forth in those Paragraphs.

157. The resolutions of liability in this Section are based exclusively on claims arising at WRB/P66’s Wood River Refinery.

158. The United States and Illinois reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or Illinois to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraphs 149–156. The United States and Illinois further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Wood River Refinery, whether related to the violations addressed in this Consent Decree or otherwise.

159. In any subsequent administrative or judicial proceeding initiated by the United States or Illinois for injunctive relief, civil penalties, or other appropriate relief relating to the Wood River Refinery or WRB/P66’s CAA violations, WRB/P66 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 and Illinois in the subsequent proceeding

were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraphs 149–156 of this Section.

160. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. WRB/P66 is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and WRB/P66'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 and Illinois do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that WRB/P66's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401 *et seq.*, or with any other provisions of federal, state, or local laws, regulations, or permits.

161. This Consent Decree does not limit or affect the rights of WRB/P66 or of the United States or of Illinois 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 WRB/P66, except as otherwise provided by law.

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

#### **XV. COSTS**

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

attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by WRB/P66.

## **XVI. NOTICES**

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

### As to the United States:

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

Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611  
Reference Case No. 90-5-2-1-06722/6

### As to EPA (Headquarters):

Not required.

### As to EPA (Region 5):

Required where either the "United States" or "EPA" is a recipient.  
Hard copy and electronic submissions are required.  
Hard copies shall be addressed to:

Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Electronic submissions shall be addressed to:

[r5ardreporting@epa.gov](mailto:r5ardreporting@epa.gov)  
[Loukeris.constantinos@epa.gov](mailto:Loukeris.constantinos@epa.gov)  
[Gehrig.greg@epa.gov](mailto:Gehrig.greg@epa.gov)  
[Wagner.william@epa.gov](mailto:Wagner.william@epa.gov)  
[Mcauliffe.mary@epa.gov](mailto:Mcauliffe.mary@epa.gov)

As to Illinois:

Chief, Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

Maureen Wozniak, Counsel  
Illinois EPA  
1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Manager  
Compliance & Enforcement Section  
Illinois EPA  
1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

As to WRB/P66:

Tim E. Goedeker, Environmental Manager HSE Refining  
Phillips 66 Company  
2331 CityWest Blvd  
Houston, TX 77042

Dean Maniatis, Refining HSE Manager  
Phillips 66 Company  
2331 CityWest Blvd  
Houston, TX 77042

Deputy General Counsel, Legal Compliance, Environmental & Regulatory  
Legal Department  
Phillips 66 Company  
2331 CityWest Blvd  
Houston, TX 77042

Refinery Manager  
WRB Refining LP  
Wood River Refinery  
P.O. Box 76  
Roxana, IL 62084

165. Date of Submission and Date of Receipt. Unless otherwise provided herein, notifications to or communications between the Parties shall be deemed submitted on the date they are postmarked and sent by U.S. Mail or overnight mail, postage prepaid, or, if the communication is required to be submitted solely to EPA, then on the date sent by electronic mail; provided however, that notices under Section XI (Force Majeure) and Section XII (Dispute Resolution) shall be sent by overnight mail or by certified or registered mail, return receipt requested. Notifications to or communications mailed to WRB/P66 shall be deemed to be received on the earlier of: (i) actual receipt by WRB/P66; or (ii) receipt of an electronic version sent to the addressees set forth in this Paragraph. If the date for submission of a report, study, notification, or other communication falls on a Saturday, Sunday or federal holiday, the report, study, notification, or other communication will be deemed timely if it is submitted the next business day.

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

**XVII. EFFECTIVE DATE**

167. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided however, that WRB/P66 hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

**XVIII. RETENTION OF JURISDICTION**

168. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, or effectuating or enforcing compliance with the terms of this Decree.

**XIX. MODIFICATION**

169. The terms of this Consent Decree, including the attached Appendices, may be modified only by a subsequent written agreement signed by the United States, Illinois, and WRB/P66. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

170. The nature and frequency of reports required by this Consent Decree may be modified by mutual agreement of the United States and WRB/P66. The agreement of the United States to such modification must be in the form of a written notification from EPA, but need not be filed with the Court to be effective.

171. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 140, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## **XX. TERMINATION**

172. Termination: Conditions Precedent. Prior to termination, WRB/P66 must have completed all of the following requirements of this Consent Decree:

- a. Payment of all civil penalties, stipulated penalties and other monetary obligations;
- b. Satisfactory compliance with all provisions of Section V (Injunctive Relief) and Appendix A (Flaring Minimization and Efficiency);
- c. Completion of at least two LDAR audits pursuant to Paragraphs 36–37;
- d. Operation for at least one year in satisfactory compliance with the limitations and standards set forth in Paragraphs A4, A12.b, A14, and A15;
- e. Completion of the Supplemental Environmental Project in Section VII;
- f. Completion of the Environmental Mitigation Project in Paragraph 73 (New Vacuum Truck Unloading Facility);
- g. Application for and receipt of all non-Title V air permits necessary to ensure survival of the Consent Decree limits and standards after termination of this Consent Decree (the Paragraph 85 requirement); and



h. Application for a modification or amendment to the Title V permit to incorporate the limits and standards in Paragraph 85 into the Title V permit of the Wood River Refinery.

173. Termination: Procedure.

a. At such time as WRB/P66 believes that it has satisfied the conditions for termination set forth in Paragraph 172, WRB/P66 may submit a request for termination to the United States and Illinois by certifying such compliance in accordance with the certification language in Paragraph 101. In the Request for Termination, WRB/P66 must demonstrate that it has satisfied the conditions for termination set forth in Paragraph 172. The Request for Termination shall include all necessary supporting documentation.

b. Following receipt by the United States and Illinois of WRB/P66's Request for Termination, the Parties shall confer informally concerning the Request. If the United States and Illinois agree that the Decree may be terminated, the Parties shall submit a joint motion to terminate this Consent Decree.

c. If the United States and Illinois do not agree that the Consent Decree may be terminated, or if WRB/P66 does not receive a written response from the United States within 60 days of WRB/P66's submission of the Request for Termination, WRB/P66 may invoke dispute resolution under Section XII of this Decree (Dispute Resolution).

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

174. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability) at Paragraph 10; Section V (Injunctive Relief) at Paragraphs 14–82 and 84–86; Appendix A (Flaring Minimization and Efficiency) at Paragraphs A1 and A4–A30; Section VIII (Reporting

and Recordkeeping) at Paragraphs 98.a–e, 98.g–i, and 99–101; and Section XIII (Information Collection and Retention) at Paragraphs 144–145 is restitution or required to come into compliance with law.

## **XXII. PUBLIC PARTICIPATION**

175. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. WRB/P66 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 WRB/P66 in writing that it no longer supports entry of the Decree.

## **XXIII. SIGNATORIES/SERVICE**

176. Each undersigned representative of WRB/P66 and the Chief, Environmental Enforcement, Illinois Attorney General’s Office, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

177. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. WRB/P66 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.

**XXIV. INTEGRATION**

178. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and its Appendices and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

**XXV. FINAL JUDGMENT**

179. 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, Illinois, and WRB/P66. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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UNITED STATES DISTRICT JUDGE

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, et al. v. WRB Refining LP, et al.* (S.D. Ill.).

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

s/Jeffrey H. Wood  
JEFFREY H. WOOD  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

s/Annette M. Lang  
ANNETTE M. LANG  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
Ben Franklin Station  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-4213  
(202) 616-6584 (fax)  
[annette.lang@usdoj.gov](mailto:annette.lang@usdoj.gov)

STEVEN D. WEINHOFET  
United States Attorney

s/Nathan D. Stump  
NATHAN D. STUMP  
Assistant United States Attorney  
9 Executive Dr.  
Fairview Heights, Illinois 62208  
Tel: (618) 628-3700  
Fax: (618) 628-3720  
Email: [nathan.stump@usdoj.gov](mailto:nathan.stump@usdoj.gov)

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, et al. v. WRB Refining LP, et al.* (S.D. Ill.).

**FOR U.S. ENVIRONMENTAL PROTECTION  
AGENCY, REGION 5:**

s/T. Leverett Nelson\*\*\*  
T. LEVERETT NELSON  
Regional Counsel  
Office of Regional Counsel  
United States Environmental Protection Agency, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

\*\*\* Signed with permission.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, et al. v. WRB Refining LP, et al.* (S.D. Ill.).

**FOR PLAINTIFF THE STATE OF ILLINOIS:**

LISA MADIGAN, Attorney General  
of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

By: s/Andrew Armstrong\*\*\*  
ANDREW ARMSTRONG  
Chief, Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

\*\*\* Signed with permission.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, et al. v. WRB Refining LP, et al.* (S.D. Ill.).

**FOR DEFENDANT WRB REFINING LP  
By Phillips 66 Company, Operator**

s/Gerald A. Knoyle\*\*\*  
GERALD A. KNOYLE  
Manager, Wood River Refinery  
Phillips 66 Company  
900 S. Central Ave.  
Roxana, Illinois 62084  
(618) 255-2501

\*\*\* Signed with permission.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, et al. v. WRB Refining LP, et al.* (S.D. Ill.).

**FOR DEFENDANT PHILLIPS 66 COMPANY**

s/Gerald A. Knoyle\*\*\*  
GERALD A. KNOYLE  
Manager, Wood River Refinery  
Phillips 66 Company  
900 S. Central Ave.  
Roxana, Illinois 62084  
(618) 255-2501

\*\*\* Signed with permission.