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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Apache Nitrogen Products, Inc., an
Arizona corporation,

Defendant.

Case No. CV-20-00463-TUC-BGM

CONSENT DECREE

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1 **I. BACKGROUND**

2 A. WHEREAS, Plaintiff, United States of America, on behalf of the United States
3 Environmental Protection Agency (“EPA”), has filed a complaint in this action
4 (“Complaint”) concurrently with this Consent Decree, alleging that Defendant, Apache
5 Nitrogen Products, Inc. (“ANPI”), violated Sections 112(r)(1) and 112(r)(7) of the Clean
6 Air Act (“CAA”), 42 U.S.C. § 7412(r)(1), (r)(7), Section 103 of the Comprehensive
7 Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C.
8 § 9603, and Section 304 of the Emergency Planning and Community Right-to-Know Act
9 (“EPCRA”), 42 U.S.C. § 11004, and their implementing regulations, at the chemical
10 manufacturing facility ANPI owns and operates in Cochise County, Arizona (the
11 “Facility”).
12
13
14

15 B. WHEREAS, EPA began an investigation of the Facility after a June 10, 2014,
16 release of anhydrous ammonia that occurred at the facility; on that date, ANPI was
17 offloading ammonia from a rail car when a sight glass in the ammonia piping broke,
18 resulting in the release of 52,000 pounds of anhydrous ammonia and injuries to ANPI
19 employees and an ANPI contractor.
20
21

22 C. WHEREAS, the Complaint against ANPI alleges the following violations of
23 Sections 112(r)(1) and 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(1), (r)(7), and their
24 implementing regulations:
25

26 a. Failure to establish and implement an appropriate Management System to
27 oversee implementation of a Risk Management Plan (“RMP”), as required by 40 C.F.R.
28 §§ 68.12 and 68.15;

- 1 b. Failure to include all covered RMP Program 3 processes in its Process
2 Hazard Analysis (“PHA”), as required by 40 C.F.R. § 68.67(a);
3
- 4 c. Failure to document compliance with recognized and generally accepted
5 good engineering practices (“RAGAGEP”), as required by 40 C.F.R. § 68.65(d)(2);
6
- 7 d. Failure to establish a system to promptly address findings and
8 recommendations made in a PHA in a timely manner and document the resolution, as
9 required by 40 C.F.R. § 68.67(e);
- 10 e. Failure to adequately establish and implement the Facility’s mechanical
11 integrity program, as required by 40 C.F.R. § 68.73(b) and (d);
12
- 13 f. Failure to correct deficiencies in equipment in a safe and timely manner, as
14 required by 40 C.F.R. § 68.73(e);
- 15 g. Failure to adequately establish and implement an emergency response
16 program, as required by 40 C.F.R. §§ 68.90, 68.93, and 68.95;
17
- 18 h. Failure to certify compliance audits and to promptly respond to the findings
19 of compliance audits, as required by 40 C.F.R. § 68.79(a) and (d);
20
- 21 i. Failure to ensure the completeness and accuracy of process safety
22 information, as required by 40 C.F.R. § 68.65(a) and (d);
23
- 24 j. Failure to develop and implement clear written operating instructions, as
25 required by 40 C.F.R. § 68.69(a);
- 26 k. Failure to update the Facility’s five-year accident history to include
27 accidental releases, as required by 40 C.F.R. §§ 68.195(a), 68.168, and 68.175(l);
28
- l. Failure to certify the Facility’s operating procedures annually, as required

1 by 40 C.F.R. § 68.69(c); and

2 m. Failure to design and maintain a safe facility with respect to equipment at
3 the Facility's liquid ammonium nitrate unit, as required by the General Duty Clause of
4 the CAA, 42 U.S.C. § 7412(r)(1).
5

6 D. WHEREAS, the Complaint also alleges that ANPI violated Section 103(a) of
7 CERCLA, 42 U.S.C. § 9603, by failure to timely notify national authorities of an August
8 3, 2015 release of anhydrous ammonia, and violated Section 304 of EPCRA, 42 U.S.C.
9 § 11004, by failure to timely notify state and local authorities of that same release.
10

11 E. WHEREAS, ANPI does not admit any liability to the United States arising out of
12 the transactions or occurrences alleged in the Complaint.
13

14 F. WHEREAS, the Parties recognize, and the Court by entering this Consent Decree
15 finds, that this Consent Decree has been negotiated by the Parties in good faith and will
16 avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and
17 in the public interest.
18

19 NOW, THEREFORE, before the taking of any testimony, without the adjudication
20 or admission of any issue of fact or law except as provided in Section II (Jurisdiction and
21 Venue), and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED,
22 AND DECREED as follows:
23

24 **II. JURISDICTION AND VENUE**
25

26 1. This Court has jurisdiction over the subject matter of this action, pursuant
27 to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C.
28 § 7413(b), Section 103 of CERCLA, 42 U.S.C. § 9603, Section 304 of EPCRA, 42

1 U.S.C. § 11004, and over the Parties. Venue lies in this District pursuant to Section
2 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 113(b) of CERCLA, 42 U.S.C.
3 § 9613(b), Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), and 28 U.S.C.
4 §§ 1391(b), 1391(c), 1391(d), and 1395(a), because ANPI's principal place of business is
5 located in this judicial district, and the violations alleged in the Complaint are alleged to
6 have occurred in this judicial district. For purposes of this Decree, or any action to
7 enforce this Decree, ANPI consents to the Court's jurisdiction over this Decree and any
8 such action and over ANPI and consents to venue in this judicial district.
9

10
11 2. For purposes of this Consent Decree, ANPI agrees that the Complaint states
12 claims upon which relief may be granted pursuant to Sections 112(r)(1) and 112(r)(7) of
13 the CAA, 42 U.S.C. § 7412(r)(1), (r)(7), Section 103 of CERCLA, 42 U.S.C. § 9603, and
14 Section 304 of EPCRA, 42 U.S.C. § 11004.
15

16
17 **III. APPLICABILITY**

18 3. The obligations of this Consent Decree apply to and are binding upon the
19 United States, and upon ANPI and any successors, assigns, or other entities or persons
20 otherwise bound by law.
21

22 4. No transfer of ownership or operation of the Facility, whether in
23 compliance with the procedures of this Paragraph or otherwise, shall relieve ANPI of its
24 obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior
25 to such transfer, ANPI shall provide a copy of this Consent Decree to the proposed
26 transferee and shall simultaneously provide written notice of the prospective transfer,
27 together with a copy of the proposed written agreement, to EPA Region 9 and the U.S.
28

1 Department of Justice, in accordance with Section XIV (Notices). Any attempt to
2 transfer ownership or operation of the Facility without complying with this Paragraph
3 constitutes a violation of this Decree.
4

5 5. ANPI shall provide a copy of this Consent Decree to all officers,
6 employees, and agents whose duties might reasonably include compliance with any
7 provision of this Decree, as well as to any contractor retained to perform work required
8 under this Consent Decree. ANPI shall condition any such contract upon performance of
9 the work in conformity with the terms of this Consent Decree.
10

11 6. In any action to enforce this Consent Decree, ANPI shall not raise as a
12 defense the failure by any of its officers, directors, employees, agents, or contractors to
13 take any actions necessary to comply with the provisions of this Consent Decree.
14

15 **IV. DEFINITIONS**

16 7. Terms used in this Consent decree that are defined in the CAA, CERCLA,
17 EPCRA, or in regulations promulgated pursuant to those statutes shall have the meanings
18 assigned to them in the CAA, CERCLA, EPCRA or such regulations, unless otherwise
19 provided in this Decree. Whenever the terms set forth below are used in this Consent
20 Decree, the following definitions shall apply:
21

22 a. “Anhydrous Ammonia Truck Offloading Area” shall mean the area
23 for the unloading of anhydrous ammonia from truck transports.
24

25 b. “Anhydrous Ammonia Process” shall mean the anhydrous ammonia
26 process used to manufacture ANPI’s nitrogen-based chemicals, including all equipment
27 in such process, including, but not limited to, pressure vessels, tanks, piping, rotating
28

1 equipment, valves, associated relief systems, and distributed control systems and other
2 computer-based programs involved with process controls;

3
4 c. “ANPI” shall mean Apache Nitrogen Products, Inc., an Arizona
5 corporation;

6 d. “ANSI” shall mean the American National Standards Institute;

7 e. “ASME” shall mean the American Society of Mechanical Engineers;

8 f. “CAA” shall mean the Clean Air Act, 42 U.S.C. § 7401 *et seq.*;

9
10 g. “CERCLA” shall mean the Comprehensive Environmental
11 Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*;

12 h. “CGA” shall mean the Compressed Gas Association;

13
14 i. “Commence Operation” or “Commencing Operation” shall mean to
15 begin continuous operation of a system or equipment following a reasonable shakedown,
16 debugging, or commissioning period and mechanical/performance acceptance (including,
17 but not limited to, a successful performance demonstration run) by the equipment
18 manufacturer or supplier, installation contractor, and/or ANPI;

19
20 j. “Complaint” shall mean the complaint filed by the United States in
21 this action;

22
23 k. “Consent Decree” or “Decree” shall mean this Decree, including its
24 Appendices listed in Section XXV (Appendices) below;

25
26 l. “Day” shall mean a calendar day unless expressly stated to be a
27 business day. In computing any period of time under this Consent Decree, where the last
28 day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the

1 close of business of the next business day;

2 m. “Defendant” shall mean ANPI;

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

5 o. “EPCRA” shall mean the Emergency Planning and Community
6 Right-To-Know Act, 42 U.S.C. § 11001, *et seq.*;

7 p. “Effective Date” shall have the definition provided in Section XV
8 (Effective Date).

9 q. “Facility” shall mean ANPI’s nitrogen-based chemical
10 manufacturing facility, located in Cochise County, Arizona;

11 r. “Final PSCA Report” shall mean the report described in Paragraph
12 20.d below;

13 s. “Magazine and Curtis Yard Process” shall mean the anhydrous
14 ammonia process comprising liquid ammonia rail cars stored or held in rail spurs at the
15 Facility;

16 t. “Paragraph” shall mean a portion of this Decree identified by an
17 Arabic numeral;

18 u. “Parties” shall mean the United States and ANPI;

19 v. “Process Safety Culture Audit” or “PSCA” shall mean a Process
20 Safety Culture Audit as described in Paragraph 20 below;

21 w. “PSCA Corrective Action(s)” shall have the meaning described in
22 Paragraph 20.d(3) below;

1 x. “PSCA Team” shall mean the ANPI employees described in
2 Paragraph 20.b below;

3 y. “Qualified Third-Party Expert” or “Expert” shall mean the outside
4 expert described in Paragraph 20.a below;

5 z. “Section” shall mean a portion of this Decree identified by a Roman
6 numeral; and
7

8 aa. “United States” shall mean the United States of America, acting on
9 behalf of EPA.
10

11 **V. CIVIL PENALTY**

12 8. Within 60 Days after the Effective Date, or 20 Days after receiving
13 payment instructions as described in Paragraph 9, whichever is later, ANPI shall pay the
14 sum of \$1,500,000 as a civil penalty, together with interest accruing from the date on
15 which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C.
16 § 1961 as of the date of lodging.
17

18 9. ANPI shall pay the civil penalty due by FedWire Electronic Funds Transfer
19 (“EFT”) to the U.S. Department of Justice account, in accordance with instructions
20 provided to ANPI by the Financial Litigation Unit (“FLU”) of the United States
21 Attorney’s Office for the District of Arizona after the Effective Date. The payment
22 instructions provided by the FLU will include a Consolidated Debt Collection System
23 (“CDCS”) number, which ANPI shall use to identify all payments required to be made in
24 accordance with this Consent Decree. The FLU will provide the payment instructions to:
25
26
27
28

1 Chris S. Leason
2 Gallagher & Kennedy, PA
3 2575 East Camelback Road
4 Suite 1100
5 Phoenix, AZ 85016
6 chris.leason@gknet.com

7 on behalf of ANPI. ANPI may change the individual to receive payment instructions on
8 its behalf by providing written notice of such change to the U.S. Department of Justice
9 and to EPA in accordance with Section XIV (Notices). At the time of payment, ANPI
10 shall send notice that payment has been made: (i) to EPA via email at
11 cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office,
12 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the U.S. Department of
13 Justice via email or regular mail in accordance with Section XIV (Notices); and (iii) to
14 EPA in accordance with Section XIV (Notices). Such notice shall state that the payment
15 is for the civil penalty owed pursuant to the Consent Decree in *United States v. Apache*
16 *Nitrogen Products, Inc.* and shall reference the civil action number, CDCS Number, and
17 DOJ case number 90-5-2-1-10736/1.
18

19
20 10. ANPI shall not deduct any penalties paid under this Decree pursuant to this
21 Section or Section VIII (Stipulated Penalties) in calculating its federal income tax.
22

23 **VI. COMPLIANCE REQUIREMENTS**

24 11. ANPI shall comply with Sections 112(r)(1) and 112(r)(7) of the CAA, 42
25 U.S.C. § 7412(r)(1), (r)(7), with Section 103 of CERCLA, 42 U.S.C. § 9603, with
26 Section 304 of EPCRA, 42 U.S.C. § 11004, and with the CAA's implementing
27 regulations found at 40 C.F.R. Part 68 with respect to the Facility.
28

1 12. Certification of Compliance Tasks Completed Prior to ANPI's Execution of
2 Consent Decree. ANPI hereby expressly certifies that it has completed the following

3
4 compliance tasks at its Facility prior to execution of the Consent Decree, and is
5 maintaining compliance with these tasks:

6 a. Updated its incident investigation form so that the form includes a
7 line for the date and time that the incident investigation began. The current version of
8 this incident investigation form is attached as Appendix A;

9
10 b. Established and implemented a program for identifying and tracking
11 recommendations from Process Hazard Analysis reports as required by 40 C.F.R. § 68.67
12 to ensure that deficiencies are corrected on a schedule appropriate to the relative risk of
13 each deficiency;

14 c. Set the program described in subparagraph b. above to send
15 automatic notifications and reminders to appropriate managers if deadlines are missed;

16
17 d. Established and implemented a program for identifying and tracking
18 recommendations from Compliance Audit Reports as required by 40 C.F.R. § 68.79, to
19 ensure that deficiencies are corrected on a schedule appropriate to the relative risk of each
20 deficiency, and to ensure that the certification under 40 C.F.R. § 68.79(a) is completed;

21
22 e. Set the program described in subparagraph d. above to send
23 automatic notifications and reminders to appropriate managers and other personnel of
24 upcoming deadlines, and automatic notifications and reminders if deadlines are missed;

25
26 f. Provided physical impact protection for all exposed piping at the
27 Anhydrous Ammonia Process in accordance with RAGAGEP, as set forth in 40 C.F.R.
28

1 § 68.65(d)(2). The current RAGAGEP for physical impact protection for exposed piping
2 is ANSI/CGA G-2.1-2014, Section 5.6.6;

3
4 g. Labeled, tagged, and/or otherwise identified all equipment, piping,
5 and valves that are part of the Anhydrous Ammonia Process in accordance with
6 RAGAGEP, as set forth in 40 C.F.R. § 68.65(d)(2). The current RAGAGEP to prevent
7 paint corrosion is 2015 ANSI/ASME standard no. A13.1 “Standard for the Identification
8 of Pipes,” except that ANPI may continue to use the color schemes it had in place as of
9 the date of lodging of this Consent Decree;

10
11 h. Added upgraded steel bulkheads in the Anhydrous Ammonia Truck
12 Offloading Area to prevent pull-away-while-connected incidents;

13
14 i. Ceased using Tanks 37 and 38 for anhydrous ammonia service;

15
16 j. Compiled, and continues to maintain, process safety information
17 pertaining to the relief system design and the relief system design basis, as required by 40
18 C.F.R. § 68.65(d)(1)(iv), for equipment in the Anhydrous Ammonia Process. ANPI
19 further certifies that the relief system is designed consistent with recognized and
20 generally accepted good engineering practices;

21
22 k. Compiled, and continues to maintain, process safety information
23 pertaining to safety systems (*e.g.*, interlocks, detection or suppression systems) as
24 required by 40 C.F.R. § 68.65(d)(1)(viii), for equipment in the Anhydrous Ammonia
25 Process. ANPI further certifies that the safety systems are designed consistent with
26 recognized and generally accepted good engineering practices;

27
28 l. Replaced all pressure relief valves in the Anhydrous Ammonia

1 Process within the last five years;

2 m. Set the future replacement frequency for all pressure relief valves in
3 the Anhydrous Ammonia Process at a maximum of five years;

4 n. Reviewed the data in its existing Tabware software program for
5 tracking preventive maintenance to: (i) identify and fix redundant and missing preventive
6 maintenance tasks; (ii) locate any equipment with a maintenance strategy of “run to
7 failure” and determine whether preventive maintenance could be prescribed instead;
8 (iii) ensure that each inspection or test has a “next inspection date”; and (iv) identify
9 work processes in Tabware that are not functioning as intended;

10 o. Implemented the procedure outlined in Appendix B (Interim
11 Procedures to Address RMP Preventive Maintenance Program Requirements) until the
12 compliance obligations set forth in Paragraph 14.b have been implemented;

13 p. Implemented all recommendations identified for the Process Hazard
14 Analysis for the Magazine and Curtis Yard Process in the document titled “April 29,
15 2016 FMEA Review for Apache Nitrogen Inc. Ammonia Rail Cars on Spur Lines”
16 conducted by Ronald Peddie, Peddie Engineering; and

17 q. Changed its policies and procedures to ensure that sight glass repair
18 kits that are not recommended by the original equipment manufacturer are no longer used
19 to repair sight glasses, and communicated the change in policies and procedures to the
20 relevant employees.

21 This certification remains in force until termination of the Consent Decree
22 pursuant to Section XVIII (Termination).
23
24
25
26
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1 13. Painting Equipment. For pipes within the Anhydrous Ammonia Process,
2 ANPI shall maintain external paint to prevent corrosion in accordance with RAGAGEP,
3 as set forth in 40 C.F.R. § 68.65(d)(2), except that ANPI may continue to use the color
4 schemes it had in place as of the date of lodging of this Consent Decree. The current
5 RAGAGEP to prevent external paint corrosion is the 2015 ANSI/ASME standard no.
6 A13.1.
7

8
9 14. Preventive Maintenance Program. ANPI shall improve its software for
10 tracking preventive maintenance to fulfill the inspection, testing, and maintenance
11 requirements set forth in 40 C.F.R. §§ 68.73(d) and 68.95(a)(2) in the following manner:
12

13 a. No later than October 1, 2020, ANPI shall conduct a survey of
14 Tabware to identify deficiencies related to: (i) automated reminders in advance of
15 scheduled maintenance with sufficient time to allow for planning to complete
16 maintenance on time; (ii) automated reminders or work orders at time maintenance is
17 due; (iii) automated reminders when maintenance deadlines are missed that go to
18 maintenance staff and managers; and (iv) a follow-up function to track action items
19 resulting from maintenance, including appropriate automated reminders. Using that
20 information, ANPI shall consult with Tabware experts to determine whether the
21 deficiencies can be addressed with upgrades, adjusted workflow features, or training.
22

23 b. If ANPI elects to upgrade Tabware to address all identified
24 deficiencies and conduct additional training, ANPI shall address all identified Tabware
25 deficiencies and train relevant personnel by April 30, 2021. If ANPI instead elects to
26 purchase alternative software that is programmed to perform all of the above-listed
27
28

1 functions, ANPI shall complete migration of data, training of relevant personnel, and
2 operation of the new software no later than February 28, 2022.

3
4 c. Beginning on the Effective Date and continuing until the preventive
5 maintenance tracking program described in Paragraphs 14.a-14.b has been fully
6 implemented, ANPI shall follow the Interim Procedures to Address RMP Preventive
7 Maintenance Program Requirements set forth in Appendix B.
8

9 15. Emergency Shutoff Valves at Rail and Truck Offloading Areas. Within one
10 year after the Effective Date, ANPI shall install emergency shutoff valves on vapor lines
11 at anhydrous ammonia rail car and truck offloading locations. The diagrams in Appendix
12 C are representative of the applicable vapor lines and general locations for the valve
13 installations. Until ANPI has installed the emergency shutoff valves at the Anhydrous
14 Ammonia Truck Offloading Area, ANPI shall maintain the current “smart hose” system
15 at the current offloading location as protection against pull-away-while-connected
16 incidents on vapor line and implement a procedure to prioritize offloading at the location
17 equipped with the smart hose system, such that offloading locations lacking the smart
18 hose system are only used if the location with a smart hose system is in use.
19
20
21

22 16. Submission of 2020 Compliance Audit Report. ANPI shall submit a copy
23 of its 2020 compliance audit report to EPA within 30 Days after certification of the
24 compliance audit report as described in 40 C.F.R. § 68.79(a).
25

26 17. Organization Chart for Risk Management Program. Within 30 Days after
27 the Effective Date, ANPI shall submit to EPA a revised organization chart or similar
28 document that identifies the qualified person or position with overall responsibility for

1 the development, implementation, and integration of the risk management program
2 elements at the Facility; additional persons assigned to implement individual
3 requirements of the risk management program; persons with backup responsibility for the
4 implementation of individual requirements if the primary person is unavailable; and the
5 lines of authority between all persons or positions with responsibility for risk
6 management program requirements.
7
8

9 18. Correcting Written Standard Operating Procedures. Appendix D to this
10 Consent Decree identifies deficiencies in ANPI’s written standard operating procedures
11 (“SOPs”), for covered process activities as described in 40 C.F.R. § 68.69(a) for
12 implementing the Risk Management Program. Within 30 Days after the Effective Date,
13 ANPI shall submit to EPA, for EPA’s review and approval, revised SOPs consistent with
14 the guidelines provided in the Center for Chemical Process Safety (“CCPS”) publication
15 *Writing Effective Operating and Maintenance Procedures*, to address the deficiencies
16 identified in Appendix D. ANPI shall implement the revised SOPs upon submission to
17 EPA.
18
19

20 19. Tanks 37 and 38. ANPI shall not return Tanks 37 or 38 to anhydrous
21 ammonia service.
22

23 20. Process Safety Culture Audit (“PSCA”).

24 a. Qualified Third-Party Expert. Within 30 Days after the Effective
25 Date, ANPI shall notify EPA, in writing, of the name, address, and telephone number of
26 a Qualified Third-Party Expert (“Expert”) ANPI has selected to conduct an analysis of
27 the Facility’s process safety culture (“Process Safety Culture Audit” or “PSCA”). The
28

1 Expert must have the following qualifications: (i) familiarity with EPA’s Risk
2 Management Program requirements and the U.S. Occupational Safety and Health
3 Administration’s Process Safety Management requirements; (ii) practical experience
4 with industrial processes subject to the requirements described in clause (i) above;
5 (iii) experience evaluating management systems for process safety; (iv) experience
6 performing qualitative and quantitative risk assessments; and (v) experience
7 interviewing industrial facility personnel, inspecting industrial processes for process
8 safety, and reviewing operational and process safety documentation.
9
10

11 b. Development and Completion of PSCA. Within 60 Days after
12 ANPI’s notification to EPA of its selection of an Expert, ANPI shall have a contract in
13 place with the Expert to perform and complete the PSCA within 240 Days after such
14 notification. In consultation with ANPI, the Expert shall carry out the PSCA with input
15 from an ANPI team that shall include at least one member knowledgeable in operations
16 of the Anhydrous Ammonia Process; at least one member knowledgeable in ANPI’s
17 operations, if any, in the Magazine and Curtis Yard Process; and at least one additional
18 staff-level employee representative from the Facility (the “PSCA Team”). ANPI shall
19 provide for Facility employee participation in a manner to be determined by the Expert
20 and the PSCA Team, such as by conducting interviews, allowing for submission of
21 confidential comments, or holding an open forum for group discussions.
22
23
24
25

26 c. Contents of PSCA. The PSCA shall include an evaluation of the
27 effectiveness of the following elements of ANPI’s process safety management system:
28

- (1) ANPI’s hazard reporting program;

- 1 (2) ANPI's response to reports of hazards;
- 2 (3) ANPI's procedures to ensure that incentive programs do not
- 3 discourage reporting of hazards; and
- 4
- 5 (4) ANPI's procedures to ensure that process safety is prioritized
- 6 during upset or emergency conditions.
- 7

8 d. Final PSCA Report. ANPI shall require the Expert, within 90 Days
9 after the Expert's completion of the PSCA, to provide ANPI with a final written report
10 of the PSCA ("Final PSCA Report"). ANPI shall provide the Final PSCA Report to
11 EPA as described in Paragraph 20.e. The Final PSCA Report shall include:

- 12
- 13 (1) A description of the method(s) used to conduct the PSCA;
- 14 (2) Detailed findings and conclusions of the PSCA; and
- 15 (3) The Expert's recommendations for corrective actions to
- 16 address the findings of the PSCA ("PSCA Corrective
- 17 Actions").
- 18

19 e. Schedule for, and Implementation of, PSCA Corrective Actions.

20 Within 60 Days after ANPI receives the Final PSCA Report, ANPI shall provide to EPA
21 for review and approval (as described in Paragraphs 24-27) a list of ANPI's
22 recommended corrective actions to be implemented at the ANPI Facility based on the
23 Final PSCA Report, as well as a schedule for implementing that list of recommended
24 corrective actions; at that time, ANPI shall also provide the Final PSCA Report to EPA
25 for informational purposes to assist EPA's review of the list of ANPI's recommended
26 corrective actions. Such implementation shall be completed within 670 Days after EPA
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1 approves the list of recommended corrective actions and the schedule for implementing
2 those actions.

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4 f. Post-PSCA Interim Assessment. ANPI shall conduct a written
5 Interim Assessment, which ANPI shall submit to EPA, of the implementation and
6 effectiveness of each PSCA corrective action, and shall submit that Interim Assessment
7 at least 365 Days after, and no more than 455 Days after, the completion of PSCA
8 Corrective Actions. If a corrective action is found to be ineffective, ANPI shall
9 implement changes necessary to ensure effectiveness in a timely manner not to exceed
10 180 Days after the Interim Assessment.
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13 g. Signatory. The Facility's Environmental Director shall serve as
14 signatory to the Final PSCA Report and any related reports, corrective action plans and
15 Interim Assessments.
16

17 h. Dissemination. The Final PSCA Report, any corrective action
18 plan(s) and the Interim Assessment shall be communicated and made available to
19 employees, their representatives and participating contractors within 60 Days after
20 completion of each such report, plan, or assessment.
21

22 21. Emergency Response Plan.

23 a. Monitoring for public exposure. Within 18 months of the Effective
24 Date, ANPI shall install and Commence Operation of an enhanced anhydrous ammonia
25 monitoring system ("Monitoring System") that detects concentrations of anhydrous
26 ammonia from accidental releases and uses a combination of data and modeling to
27 determine whether anhydrous ammonia at a concentration of 35 parts per million ("ppm")
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1 or greater may reach “public receptors,” as that term is defined in 40 C.F.R. § 68.3.
2 ANPI may continue to use perimeter monitoring using handheld ammonia meters to
3 supplement the Monitoring System, but only to confirm the absence of off-site
4 concentrations of ammonia above 35 ppm. If used, such perimeter monitoring must be
5 conducted by trained personnel using appropriate personal protective equipment, which
6 at a minimum shall include a full face respirator. ANPI shall update its Emergency
7 Response Plan procedures to include operation of the Monitoring System and to prohibit
8 personnel from conducting fenceline monitoring by handheld ammonia meters where
9 anhydrous ammonia is known or suspected to be present at levels above 250 ppm.
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13 b. Management of Change for Monitoring System. ANPI shall follow
14 its Management of Change procedures, established pursuant to 40 C.F.R. § 68.75, to
15 study and address the addition of the Monitoring System. At least 30 Days before
16 Commencing Operation of the Monitoring System, ANPI shall develop procedures for
17 operation, inspection, testing, and maintenance of the Monitoring System. ANPI shall
18 provide operating training to personnel who may operate the Monitoring System at least
19 15 Days prior to Commencing Operation of the Monitoring System. Upon Commencing
20 Operation of the Monitoring System, ANPI shall include in its semi-annual reports any
21 records on inspection, testing, and preventive maintenance of the Monitoring System. If
22 there were any instances during the reporting period when the Monitoring System
23 detected anhydrous ammonia at a concentration of 134 ppm or above for five minutes at
24 the individual ammonia detector(s), ANPI shall also include in its semi-annual reports:
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- (1) a description of the event that triggered the Monitoring

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System;

- (2) the time and date of the alarm;
- (3) whether the concentration of ammonia detected or modeled by the Monitoring System was confirmed or tested by any other methods or instruments;
- (4) whether any alarms were triggered to alert employees or the public to the hazard;
- (5) whether the Monitoring System predicted or modeled that concentrations of ammonia at public receptors could reach 35 ppm or above; and
- (6) whether any changes or recalibrations were made as a result of the event.

c. Public Notification. Within 180 Days of the Effective Date, ANPI shall have in place procedures and training for relevant ANPI employees and contractors to request Cochise County to send an alert to cellular phones in an area where a release of anhydrous ammonia may reach public receptors at a concentration of 35 ppm or greater using the Integrated Public Alert and Warning System (“IPAWS”) or an equivalent system that provides appropriate instructions to the public, such as shelter in place or evacuation warnings. ANPI shall incorporate these procedures into its Emergency Response Plan. ANPI shall also, in the course of its regular outreach to the surrounding community, provide for an option for community members to receive notification on a wired phone connection using Rave Mobile Safety if the person requesting such

1 notification lacks adequate cellular phone coverage at the wired phone location.

2 22. Updating Instructions in Emergency Response Plan. Within 90 Days of
3 the Effective Date, ANPI shall update its Emergency Response Plan required by 40
4 C.F.R. § 68.95(a)(1) to provide clear instructions as to what conditions trigger a
5 requirement to notify the public, what emergency response instructions should be
6 distributed to the public in the event of various scenarios, and how to use Rave Mobile
7 Safety effectively (for example, how different messages can be distributed, identification
8 of multiple zones at set distances from the Facility, and how to distribute messages to
9 specific zones).

10 23. Mechanical Integrity: Submission of 2022 Non-Destructive Testing
11 Report. ANPI shall submit to EPA its 2022 Non-Destructive Testing report within 30
12 Days after the report's completion. The report shall include a description of the testing
13 performed, the date of each test, the name of the person who performed the test, the serial
14 number or other identifier of the equipment on which the test was performed, and details
15 on the results of the test.

16 24. Approval of Deliverables. Except for those deliverables specified in
17 Paragraph 29, after review of any plan, report, or other item that is required to be
18 submitted pursuant to this Consent Decree, EPA shall in writing: (a) approve the
19 submission; (b) approve the submission upon specified conditions; (c) approve part of the
20 submission and disapprove the remainder; or (d) disapprove the submission.

21 25. If the submission is approved pursuant to Paragraph 24, ANPI shall take all
22 actions required by the plan, report, or other document, in accordance with the schedules
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1 and requirements of the plan, report, or other document, as approved. If the submission
2 is conditionally approved or approved only in part pursuant to Paragraph 24(b) or (c),
3 ANPI shall, upon written direction from EPA, take all actions required by the approved
4 plan, report, or other item that EPA determines are technically severable from any
5 disapproved portions, subject to ANPI's right to dispute only the specified conditions or
6 the disapproved portions, under Section X (Dispute Resolution).
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9 26. If the submission is disapproved in whole or in part pursuant to Paragraph
10 24(c) or (d), ANPI shall, within 45 Days after receiving notice of such disapproval or
11 such other time as the Parties agree to in writing, correct all deficiencies and resubmit the
12 plan, report, or other item, or disapproved portion thereof, for approval, subject to
13 ANPI's right to invoke Dispute Resolution as provided in Section X (Dispute
14 Resolution), in accordance with the preceding Paragraphs. If the resubmission is
15 approved in whole or in part, ANPI shall proceed in accordance with the preceding
16 Paragraph.
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19 27. If a resubmitted plan, report, or other item, or portion thereof, is
20 disapproved in whole or in part, EPA may again require ANPI to correct any deficiencies,
21 in accordance with the preceding Paragraphs, subject to ANPI's right to invoke Dispute
22 Resolution as provided in Section X (Dispute Resolution) and the right of EPA to seek
23 stipulated penalties as provided in Section VIII (Stipulated Penalties).
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26 28. Any stipulated penalties applicable to the original submission, as provided
27 in Section VIII (Stipulated Penalties), shall accrue during the 45-Day period or other
28 specified period, but shall not be payable unless the resubmission is untimely or is

1 disapproved in whole or in part; provided that, if the original submission was so deficient
2 as to constitute a material breach of ANPI's obligations under this Decree, the stipulated
3 penalties applicable to the original submission shall be due and payable notwithstanding
4 any subsequent resubmission.
5

6 29. Deliverables That Do Not Require Approval. The following deliverables
7 are to be submitted for information only, and are not subject to the review and approval
8 process described in Paragraphs 24-28:
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- 10 a. 2020 Compliance Audit Report (as described in Paragraph 16);
- 11 b. Organization Chart for Risk Management Program (as described in
12 Paragraph 17);
- 13 c. Final PSCA Report (as described in Paragraph 20.d); and
- 14 d. Submission of 2022 Non-Destructive Testing Report (as described in
15 Paragraph 23).
16
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18 30. Permits. Where any compliance obligation under this Section requires
19 ANPI to obtain a federal, state, or local permit or approval, ANPI shall submit timely and
20 complete applications and take all other actions necessary to obtain all such permits or
21 approvals. ANPI may seek relief under the provisions of Section IX (Force Majeure) for
22 any delay in the performance of any such obligation resulting from a failure to obtain, or
23 a delay in obtaining, any permit or approval required to fulfill such obligation, if ANPI
24 has submitted timely and complete applications and has taken all other actions necessary
25 to obtain all such permits or approvals and the force majeure requirements are otherwise
26 met.
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1 **VII. REPORTING REQUIREMENTS**

2 31. ANPI shall submit the following reports to the U.S. Department of Justice
3 and to EPA:

4 a. By January 31st and July 31st of each year after the lodging of this
5 Consent Decree, until termination of this Decree pursuant to Section XVIII
6 (Termination), ANPI shall submit by email a semi-annual report for the preceding six
7 months that shall report on the status of all compliance requirements as set forth in
8 Paragraphs 13 through 23 above, including completion of milestones; problems
9 encountered or anticipated, together with implemented or proposed solutions; and status
10 of any permit applications described in Paragraph 30. The report may include work
11 orders, preventive maintenance documentation, or other documents generated in the
12 regular course of business to demonstrate the status of each compliance requirement.
13 Once a compliance requirement is documented as completed in a semi-annual report, its
14 status need not be reported in subsequent semi-annual reports. Each semi-annual report
15 shall also include, for the applicable reporting period:

- 16 (1) Descriptions of any missed deadlines for addressing
17 Compliance Audit recommendations, as described in
18 Paragraphs 12.d-12.e, copies of any notifications issued of
19 any such missed deadlines, and documentation of who
20 received such notifications;
21 (2) Descriptions of any missed deadlines for addressing Process
22 Hazard Analysis recommendations, as described in
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Paragraphs 12.b-12.c, copies of any notifications issued of any such missed deadlines, and documentation of who received such notifications;

- (3) Descriptions of all inspections, testing, and maintenance performed on process equipment and emergency response equipment, including the Monitoring System, at the Facility with an inspection frequency of one month or greater, as required by 40 C.F.R. §§ 68.73(d) and 68.95(a)(2). Such descriptions shall include the information specified at 40 C.F.R. § 68.73(d)(4); the interval specified for the inspection, test, or maintenance activity; and the date of the prior inspection, test, or maintenance activity;
- (4) If there were any instances during the reporting period when the Monitoring System detected anhydrous ammonia at or above the concentration identified in Paragraph 21.b, the information detailed at Paragraphs 21.b(1)-(6); and
- (5) Copies of training logs for training sessions provided during the reporting period for use of handheld ammonia meters for perimeter monitoring consistent with ANPI's procedures entitled Ammonia Release Perimeter Monitoring Procedure ENV-0150 and SWP-0009 Safe Work Permit Procedure. The training logs shall identify the names of people who attended

1 the training, subjects covered in the training, and the date of
2 the training.

3
4 b. Each report submitted pursuant to this Paragraph shall include a
5 description of any non-compliance with the requirements of this Consent Decree and an
6 explanation of the violation's likely cause and of the remedial steps taken, or to be taken,
7 to prevent or minimize such violation. If ANPI violates, or has reason to believe that it
8 may violate, any requirement of this Consent Decree, ANPI shall notify the U.S.
9 Department of Justice and EPA of such violation and its likely duration, in writing,
10 within 14 Days after the Day ANPI first becomes aware of the violation, with an
11 explanation of the violation's likely cause and of the remedial steps taken, or to be taken,
12 to prevent or minimize such violation. If the cause of a violation cannot be fully
13 explained at the time the notification is due:
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- 15
16 (1) ANPI shall so state in the notification; and
17
18 (2) ANPI shall investigate the cause of the violation and shall
19 then submit an amendment to the notification, including a full
20 explanation of the cause of the violation, within 30 Days after
21 the Day ANPI becomes aware of the cause of the violation.
22

23 Nothing in this Paragraph or the following Paragraph relieves ANPI of its obligation to
24 provide the notice required by Section IX (Force Majeure).
25

26 32. Whenever any violation of this Consent Decree or any other event affecting
27 ANPI's performance under this Decree, or the performance of its Facility, may pose an
28 immediate threat to the public health or welfare or the environment, ANPI shall notify

1 EPA orally or by electronic or facsimile transmission as soon as possible, but no later
2 than 24 hours after ANPI first knew of the violation or event. This procedure is in
3 addition to the requirements set forth in the preceding Paragraph.
4

5 33. All reports shall be submitted to the persons designated in Section XIV
6 (Notices).
7

8 34. Each report submitted by ANPI under this Section shall be signed by an
9 official of the submitting party and include the following certification:

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

20 35. This certification requirement does not apply to emergency or similar
21 notifications where compliance would be impractical.
22

23 36. The reporting requirements of this Consent Decree do not relieve ANPI of
24 any reporting obligations required by the CAA, CERCLA, EPCRA, or implementing
25 regulations, or by any other federal, state, or local law, regulation, permit, or other
26 requirement.
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28 37. 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.

1 **VIII. STIPULATED PENALTIES**

2 38. ANPI shall be liable for stipulated penalties to the United States for
3 violations of this Consent Decree as specified below, unless excused under Section IX
4 (Force Majeure). A violation includes failing to perform any obligation required by the
5 terms of this Decree, including any work plan or schedule approved under this Decree,
6 according to all applicable requirements of this Decree and within the specified time
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8 schedules established by or approved under this Decree.
9

10 39. Late Payment of Civil Penalty. If ANPI fails to pay the civil penalty
11 required to be paid under Section V (Civil Penalty) when due, ANPI shall pay a
12 stipulated penalty of \$3,000 per Day for each Day that the payment is late.
13

14 40. Compliance Milestones.

15 a. The following stipulated penalties shall accrue per violation per Day
16 for each violation of the requirements identified in subparagraph 40.b:
17

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$2,500	15th through 30th Day
\$5,000	31st Day and beyond

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22 b. Specified Compliance Requirements.

- 23 (1) Upgrading or replacing Tabware, as specified in Paragraph
24 14.b;
- 25 (2) Completing the installation of emergency shutoff valves at
26 the Anhydrous Ammonia Rail and Truck Offloading Area, as
27 specified in Paragraph 15;
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- (3) Submitting a copy of the 2020 Compliance Audit Report, as specified in Paragraph 16;
- (4) Submitting proposed corrections for written standard operating procedures, as specified in Paragraph 18;
- (5) Keeping Tanks 37 and 38 out of anhydrous ammonia service, as specified in Paragraph 19;
- (6) Providing the Final PSCA Report to EPA, as specified in Paragraph 20.d;
- (7) Providing a list of recommended PSCA corrective actions to EPA, as specified in Paragraph 20.e;
- (8) Completing the recommended PSCA corrective actions, as specified in Paragraph 20.e;
- (9) Submitting the Interim Assessment, as specified in Paragraph 20.f;
- (10) Installing and Commencing Operation of the Monitoring System, as specified in Paragraph 21.a;
- (11) Updating the Emergency Response Plan procedures, as specified in Paragraph 21.a;
- (12) Developing procedures for operation, inspection, testing, and maintenance of the Monitoring System, as specified in Paragraph 21.b;
- (13) Providing operating training to personnel who may operate

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the Monitoring System, as specified in Paragraph 21.b;

(14) Implementing procedures and training for relevant ANPI employees and contractors, as specified in Paragraph 21.c;

(15) Updating instructions in the Emergency Response Plan, as specified in Paragraph 22; and

(16) Submitting the 2022 Non-Destructive Testing Report, as specified in Paragraph 23.

41. Reporting Requirements; Other Violations Not Specified in Paragraph 40.b.

The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VII (Reporting Requirements), or for other violations of the Consent Decree that are not specifically enumerated in Paragraph 40.b:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th Day
\$1,500	15th through 30th Day
\$3,000	31st Day and beyond

42. 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.

43. ANPI shall pay any stipulated penalty within 30 Days after receiving the United States' written demand.

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

3 45. Stipulated penalties shall continue to accrue as provided in Paragraph 42,
4 during any Dispute Resolution, but need not be paid until the following:
5

6 a. If the dispute is resolved by agreement of the Parties or by a decision
7 of EPA that is not appealed to the Court, ANPI shall pay accrued penalties determined to
8 be owing, together with interest as provided for in 28 U.S.C. § 1961, to the United States
9 within 30 Days after the effective date of the agreement or the receipt of EPA's decision
10 or order.
11

12 b. If the dispute is appealed to the Court and the United States prevails
13 in whole or in part, ANPI shall pay all accrued penalties determined by the Court to be
14 owing, together with interest as provided for in 28 U.S.C. § 1961, within 60 Days after
15 receiving the Court's decision or order, except as provided in subparagraph c, below.
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17 c. If any Party appeals the Court's decision, ANPI shall pay all accrued
18 penalties determined to be owing, together with interest as provided for in 28 U.S.C.
19 § 1961, within 15 Days after receiving the final appellate court decision.
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21 46. ANPI shall pay stipulated penalties owing to the United States in the
22 manner set forth and with the confirmation notices required by Paragraph 9, except that
23 the transmittal letter shall state that the payment is for stipulated penalties and shall state
24 for which violation(s) the penalties are being paid.
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26 47. If ANPI fails to pay stipulated penalties according to the terms of this
27 Consent Decree, ANPI shall be liable for interest on such penalties, as provided for in
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1 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this
2 Paragraph shall be construed to limit the United States from seeking any remedy
3 otherwise provided by law for ANPI's failure to pay any stipulated penalties.
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5 48. The payment of penalties and interest, if any, shall not alter in any way
6 ANPI's obligation to complete the performance of the requirements of this Consent
7 Decree.
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9 49. Non-Exclusivity of Remedy. Stipulated penalties are not the United States'
10 exclusive remedy for violations of this Consent Decree. Subject to the provisions of
11 Section XII (Effect of Settlement/Reservation of Rights), the United States expressly
12 reserves the right to seek any other relief it deems appropriate for ANPI's violation of
13 this Decree or applicable law, including but not limited to an action against ANPI for
14 statutory penalties, additional injunctive relief, mitigation or offset measures, and/or
15 contempt. However, the amount of any statutory penalty assessed for a violation of this
16 Consent Decree shall be reduced by an amount equal to the amount of any stipulated
17 penalty assessed and paid pursuant to this Consent Decree.
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21 **IX. FORCE MAJEURE**

22 50. "Force majeure," for purposes of this Consent Decree, is defined as any
23 event arising from causes beyond the control of ANPI, of any entity controlled by ANPI,
24 or of ANPI's contractors, that delays or prevents the performance of any obligation under
25 this Consent Decree despite ANPI's best efforts to fulfill the obligation. The requirement
26 that ANPI exercise "best efforts to fulfill the obligation" includes using best efforts to
27 anticipate any potential force majeure event and best efforts to address the effects of any
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1 potential force majeure event (a) as it is occurring and (b) following the potential force
2 majeure, such that the delay and any adverse effects of the delay are minimized. “Force
3 majeure” does not include ANPI’s financial inability to perform any obligation under this
4 Consent Decree.
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6 51. If any event occurs or has occurred that may delay the performance of any
7 obligation under this Consent Decree, whether or not caused by a force majeure event,
8 ANPI shall provide notice orally or by electronic or facsimile transmission to EPA and to
9 the U.S. Department of Justice, within 72 hours of when ANPI first knew that the event
10 might cause a delay. Within 10 Days thereafter, ANPI shall provide in writing to EPA
11 and to the U.S. Department of Justice an explanation and description of the reasons for
12 the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent
13 or minimize the delay; a schedule for implementation of any measures to be taken to
14 prevent or mitigate the delay or the effect of the delay; ANPI’s rationale for attributing
15 such delay to a force majeure event if it intends to assert such a claim; and a statement as
16 to whether, in the opinion of ANPI, such event may cause or contribute to an
17 endangerment to public health, welfare or the environment. ANPI shall include with any
18 notice all available documentation supporting the claim that the delay was attributable to
19 a force majeure. Failure to comply with the above requirements shall preclude ANPI
20 from asserting any claim of force majeure for that event for the period of time of such
21 failure to comply, and for any additional delay caused by such failure. ANPI shall be
22 deemed to know of any circumstance of which ANPI, any entity controlled by ANPI, or
23 ANPI’s contractors knew or should have known.
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1 52. If EPA agrees that the delay or anticipated delay is attributable to a force
2 majeure event, the time for performance of the obligations under this Consent Decree that
3 are affected by the force majeure event will be extended by EPA for such time as is
4 necessary to complete those obligations. An extension of the time for performance of the
5 obligations affected by the force majeure event shall not, of itself, extend the time for
6 performance of any other obligation. EPA will notify ANPI in writing of the length of
7 the extension, if any, for performance of the obligations affected by the force majeure
8 event.
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11 53. If EPA does not agree that the delay or anticipated delay has been or will be
12 caused by a force majeure event, EPA will notify ANPI in writing of its decision.
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14 54. If ANPI elects to invoke the dispute resolution procedures set forth in
15 Section X (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's
16 notice. In any such proceeding, ANPI shall have the burden of demonstrating by a
17 preponderance of the evidence that the delay or anticipated delay has been or will be
18 caused by a force majeure event, that the duration of the delay or the extension sought
19 was or will be warranted under the circumstances, that best efforts were exercised to
20 avoid and mitigate the effects of the delay, and that ANPI complied with the
21 requirements of Paragraphs 50 and 51. If ANPI carries this burden, the delay at issue
22 shall be deemed not to be a violation by ANPI of the affected obligation of this Consent
23 Decree identified to EPA and the Court.
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1 **X. DISPUTE RESOLUTION**

2 55. Unless otherwise expressly provided for in this Consent Decree, the dispute
3 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes
4 arising under or with respect to this Consent Decree. ANPI's failure to seek resolution of
5 a dispute under this Section shall preclude ANPI from raising any such issue as a defense
6 to an action by the United States to enforce any obligation of ANPI arising under this
7 Decree.
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10 56. Informal Dispute Resolution. Any dispute subject to Dispute Resolution
11 under this Consent Decree shall first be the subject of informal negotiations. The dispute
12 shall be considered to have arisen when ANPI sends the U.S. Department of Justice and
13 EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in
14 dispute. The period of informal negotiations shall not exceed 20 Days from the date the
15 dispute arises, unless that period is modified by written agreement. If the Parties cannot
16 resolve a dispute by informal negotiations, then the position advanced by the United
17 States shall be considered binding unless, within 20 Days after the conclusion of the
18 informal negotiation period, ANPI invokes formal dispute resolution procedures as set
19 forth below.
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23 57. Formal Dispute Resolution. ANPI shall invoke formal dispute resolution
24 procedures, within the time period provided in the preceding Paragraph, by serving on the
25 U.S. Department of Justice and EPA a written Statement of Position regarding the matter
26 in dispute. The Statement of Position shall include, but need not be limited to, any
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1 factual data, analysis, or opinion supporting ANPI's position and any supporting
2 documentation relied upon by ANPI.

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

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11 59. ANPI may seek judicial review of the dispute by filing with the Court and
12 serving on the U.S. Department of Justice and EPA, in accordance with Section XIV
13 (Notices), and the Local Rules of this Court, a motion requesting judicial resolution of the
14 dispute. The motion must be filed within 20 Days after receipt of the United States'
15 Statement of Position pursuant to the preceding Paragraph. The motion shall contain a
16 written statement of ANPI's position on the matter in dispute, including any supporting
17 factual data, analysis, opinion, or documentation, and shall set forth the relief requested
18 and any schedule within which the dispute must be resolved for orderly implementation
19 of the Consent Decree. The motion shall not raise any issue not raised in informal
20 dispute resolution pursuant to Paragraph 56, unless the United States raised a new issue
21 of law or fact in its Statement of Position.

22
23 60. The United States shall respond to ANPI's motion within the time period
24 allowed by the Local Rules of this Court. ANPI may file a reply memorandum, to the
25 extent permitted by the Local Rules.

1 61. Standard of Review.

2 a. Disputes Concerning Matters Accorded Record Review. Except as
3 otherwise provided in this Consent Decree, in any dispute brought under Paragraph 57
4 pertaining to the adequacy or appropriateness of plans, procedures to implement plans,
5 schedules or any other items requiring approval by EPA under this Consent Decree; the
6 adequacy of the performance of work undertaken pursuant to this Consent Decree; and all
7 other disputes that are accorded review on the administrative record under applicable
8 principles of administrative law, ANPI shall have the burden of demonstrating, based on
9 the administrative record, that the position of the United States is arbitrary and capricious
10 or otherwise not in accordance with law.
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12 b. Other Disputes. Except as otherwise provided in this Consent
13 Decree, in any other dispute brought under Paragraph 57, ANPI shall bear the burden of
14 demonstrating that its position complies with this Consent Decree and better furthers the
15 objectives of the Consent Decree than the United States' position does.
16

17 62. The invocation of dispute resolution procedures under this Section shall
18 not, by itself, extend, postpone, or affect in any way any obligation of ANPI under this
19 Consent Decree, unless and until final resolution of the dispute so provides. Stipulated
20 penalties with respect to the disputed matter shall continue to accrue from the first Day of
21 noncompliance, but payment shall be stayed pending resolution of the dispute as
22 provided in Paragraph 45. If ANPI does not prevail on the disputed issue, stipulated
23 penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).
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1 **XI. INFORMATION COLLECTION AND RETENTION**

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

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

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

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

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

13 e. assess ANPI's compliance with this Consent Decree.

14 64. Upon request, ANPI shall provide EPA or its authorized representatives
15 splits of any samples taken by ANPI. Upon request, EPA will provide ANPI splits of any
16 samples taken by EPA.

17 65. Until five years after the termination of this Consent Decree, ANPI shall
18 retain, and shall instruct its contractors and agents to preserve, all non-identical copies of
19 all documents, records, or other information (including documents, records, or other
20 information in electronic form) that are or were in its or its contractors' or agents'
21 possession or control on or after April 23, 2019, or that have come or will come into its or
22 its contractors' or agents' possession or control after this date, and that relate in any
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1 manner to ANPI's performance of its obligations under this Consent Decree. This
2 information-retention requirement shall apply regardless of any contrary corporate or
3 institutional policies or procedures. At any time during this information-retention period,
4 upon request by the United States, ANPI shall provide copies of any documents, records,
5 or other information required to be maintained under this Paragraph.
6

7
8 66. At the conclusion of the information-retention period provided in the
9 preceding Paragraph, ANPI shall notify the U.S. Department of Justice and EPA at least
10 90 Days prior to the destruction of any documents, records, or other information subject
11 to the requirements of the preceding Paragraph and, upon request by the United States,
12 ANPI shall deliver any such documents, records, or other information to EPA. ANPI
13 may assert that certain documents, records, or other information is privileged under the
14 attorney-client privilege or any other privilege recognized by federal law. If ANPI
15 asserts such a privilege, it shall provide the following: (a) the title of the document,
16 record, or information; (b) the date of the document, record, or information; (c) the name
17 and title of each author of the document, record, or information; (d) the name and title of
18 each addressee and recipient; (e) a description of the subject of the document, record, or
19 information; and (f) the privilege asserted by ANPI. However, no documents, records, or
20 other information created or generated pursuant to the requirements of this Consent
21 Decree shall be withheld on grounds of privilege.
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26 67. ANPI may also assert that information required to be provided under this
27 Section is protected as Confidential Business Information ("CBI") under 40 C.F.R.
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1 Part 2. As to any information that ANPI seeks to protect as CBI, ANPI shall follow the
2 procedures set forth in 40 C.F.R. Part 2.

3
4 68. This Consent Decree in no way limits or affects any right of entry and
5 inspection, or any right to obtain information, held by the United States pursuant to
6 applicable federal or state laws, regulations, or permits, nor does it limit or affect any
7 duty or obligation of ANPI to maintain documents, records, or other information imposed
8 by applicable federal or state laws, regulations, or permits.
9

10 **XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

11 69. This Consent Decree resolves the civil claims of the United States for the
12 violations alleged in the Complaint filed in this action through the date of lodging.
13

14 70. The United States reserves all legal and equitable remedies available to
15 enforce the provisions of this Consent Decree. This Consent Decree shall not be
16 construed to limit the rights of the United States to obtain penalties or injunctive relief
17 under the CAA, CERCLA, EPCRA, or implementing regulations, or under other federal
18 or state laws, regulations, or permit conditions, except as expressly specified in Paragraph
19

20 69. The United States further reserves all legal and equitable remedies to address any
21 imminent and substantial endangerment to the public health or welfare or the
22 environment arising at, or posed by, ANPI's Facility, whether related to the violations
23 addressed in this Consent Decree or otherwise.
24

25
26 71. In any subsequent administrative or judicial proceeding initiated by the
27 United States for injunctive relief, civil penalties, or other appropriate relief relating to
28 the Facility, ANPI shall not assert, and may not maintain, any defense or claim based

1 upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim
2 preclusion, claim-splitting, or other defenses based upon any contention that the claims
3 raised by the United States in the subsequent proceeding were or should have been
4 brought in the instant case, except with respect to claims that have been specifically
5 resolved pursuant to Paragraph 69.
6

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8 72. This Consent Decree is not a permit, or a modification of any permit, under
9 any federal, state, or local laws or regulations. ANPI is responsible for achieving and
10 maintaining complete compliance with all applicable federal, state, and local laws,
11 regulations, and permits; and ANPI's compliance with this Consent Decree shall be no
12 defense to any action commenced pursuant to any such laws, regulations, or permits,
13 except as set forth herein. The United States does not, by its consent to the entry of this
14 Consent Decree, warrant or aver in any manner that ANPI's compliance with any aspect
15 of this Consent Decree will result in compliance with provisions of the CAA, CERCLA,
16 or EPCRA, or with any other provisions of federal, state, or local laws, regulations, or
17 permits.
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21 73. This Consent Decree does not limit or affect the rights of ANPI or of the
22 United States against any third parties, not party to this Consent Decree, nor does it limit
23 the rights of third parties, not party to this Consent Decree, against ANPI, except as
24 otherwise provided by law.
25

26 74. This Consent Decree shall not be construed to create rights in, or grant any
27 cause of action to, any third party not party to this Consent Decree.
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1 **XIII. COSTS**

2 75. The Parties shall bear their own costs of this action, including attorneys’
3 fees, except that the United States shall be entitled to collect the costs (including
4 attorneys’ fees) incurred in any action necessary to collect any portion of the civil penalty
5 or any stipulated penalties due but not paid by ANPI.
6

7 **XIV. NOTICES**

8 76. Unless otherwise specified in this Paragraph or elsewhere in this Consent
9 Decree, whenever notifications, submissions, statements of position, or communications
10 are required by this Consent Decree (referred to as “notices” in this Section), they shall
11 be made electronically. For notices to EPA, ANPI shall register for the CDX electronic
12 system and upload such notices at <https://cdx.epa.gov>, and also send email copies to the
13 applicable email addresses below. Notices to the U.S. Department of Justice or to ANPI
14 shall be sent to the applicable email address(es) below. Any notice that cannot be
15 uploaded or electronically transmitted via email shall be provided in writing by mail to
16 the applicable address(es) below.
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20 As to the U.S. Department of
21 Justice by email:

eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-10736/1

22 With copy to:
23 deborah.gitin@usdoj.gov
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As to the U.S. Department of
Justice by mail:

EES Case Management Unit
Environment and Natural
Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 5-2-1-10736/1

With copy to:
Deborah Gitin, Senior Counsel
USDOJ/ENRD/EES
450 Golden Gate Avenue
Room 7-6714
San Francisco, CA 94102
Re: DJ # 90-5-2-1-10736/1

As to EPA by email:

bazley.greg@epa.gov

With copy to:
gallo.madeline@epa.gov

As to EPA by mail:

Greg Bazley
U.S. Environmental Protection
Agency
2445 Palm Drive, Suite 100
Signal Hill, CA 90755

As to ANPI by email:

traica@apachenitro.com

With copy to:
chris.leason@gknet.com

As to ANPI by mail:

T.J. Raica
Environmental Director
Apache Nitrogen Products, Inc.
1436 S. Apache Powder Road.
St. David, AZ 85630

With copy to:

Chris Leason
Gallagher & Kennedy, PA
2575 East Camelback Road
Suite 1100
Phoenix, AZ 85016

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

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

11
12 **XV. EFFECTIVE DATE**

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

16
17 **XVI. RETENTION OF JURISDICTION**

18 80. The Court shall retain jurisdiction over this case until termination of this
19 Consent Decree, for the purpose of resolving disputes arising under this Decree or
20 entering orders modifying this Decree, pursuant to Section X (Dispute Resolution) and
21 Section XVII (Modification), or effectuating or enforcing compliance with the terms of
22 this Decree.
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25 **XVII. MODIFICATION**

26 81. Except as otherwise set forth in Paragraph 77, the terms of this Consent
27 Decree, including any attached appendices, may be modified only by a subsequent
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1 written agreement signed by all the Parties (by traditional or electronic signature). Where
2 the modification constitutes a material change to this Decree, it shall be effective only
3 upon approval by the Court.
4

5 82. The following modifications have been explicitly determined by the Parties
6 to be non-material: (a) the substitution of substantially similar equipment or materials for
7 equipment or materials described in Section VI (Compliance Requirements), or
8 necessitated by the implementation of compliance requirements, so long as all Parties
9 agree that the equipment or materials are substantially similar; (b) extensions of time not
10 to exceed 90 Days at a time or 180 Days cumulatively; (c) changes in contact information
11 for Section XIV (Notices); and (d) correction of scriveners' errors.
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14 83. Any disputes concerning modification of this Decree shall be resolved
15 pursuant to Section X (Dispute Resolution), provided, however, that, instead of the
16 burden of proof provided by Paragraph 61, the Party seeking the modification bears the
17 burden of demonstrating that it is entitled to the requested modification in accordance
18 with Federal Rule of Civil Procedure 60(b).
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21 **XVIII. TERMINATION**

22 84. After ANPI has completed the requirements of Section VI (Compliance
23 Requirements), has maintained satisfactory compliance with this Consent Decree for a
24 period of two years after the Effective Date, has complied with all other requirements of
25 this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties
26 as required by this Consent Decree, ANPI may serve upon the U.S. Department of Justice
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1 and EPA a Request for Termination, stating that ANPI has satisfied those requirements,
2 together with all necessary supporting documentation.

3
4 85. Following receipt by the United States of ANPI's Request for Termination,
5 the Parties shall confer informally concerning the Request and any disagreement that the
6 Parties may have as to whether ANPI has satisfactorily complied with the requirements
7 for termination of this Consent Decree. If the United States agrees that the Decree may
8 be terminated, the Parties shall submit, for the Court's approval, a joint stipulation
9 terminating the Decree.
10

11 86. If the United States does not agree that the Decree may be terminated,
12 ANPI may invoke Dispute Resolution under Section X (Dispute Resolution). However,
13 ANPI shall not seek Dispute Resolution of any dispute regarding termination until 90
14 Days after service of its Request for Termination.
15

16
17 **XIX. PUBLIC PARTICIPATION**

18 87. This Consent Decree shall be lodged with the Court for a period of not less
19 than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The
20 United States reserves the right to withdraw or withhold its consent if the comments
21 regarding the Consent Decree disclose facts or considerations indicating that the Consent
22 Decree is inappropriate, improper, or inadequate. ANPI consents to entry of this Consent
23 Decree without further notice and agrees not to withdraw from or oppose entry of this
24 Consent Decree by the Court or to challenge any provision of the Decree, unless the
25 United States has notified ANPI in writing that it no longer supports entry of the Decree.
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1 **XX. SIGNATORIES/SERVICE**

2 88. Each undersigned representative of ANPI and the Assistant Attorney
3 General for the Environment and Natural Resources Division of the U.S. Department of
4 Justice certifies that he or she is fully authorized to enter into the terms and conditions of
5 this Consent Decree and to execute and legally bind the Party he or she represents to this
6 document.
7

8 89. This Consent Decree may be signed in counterparts, and its validity shall
9 not be challenged on that basis. ANPI agrees to accept service of process by mail with
10 respect to all matters arising under or relating to this Consent Decree and to waive the
11 formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil
12 Procedure and any applicable Local Rules of this Court including, but not limited to,
13 service of a summons. All other court filings will be served through the Court's
14 electronic filing service. ANPI need not file an answer to the Complaint in this action
15 unless or until the Court expressly declines to enter this Consent Decree, in which case
16 ANPI's answer would be due within 30 Days following the Court's order declining to
17 enter this Consent Decree.
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22 **XXI. INTEGRATION**

23 90. This Consent Decree constitutes the final, complete, and exclusive
24 agreement and understanding among the Parties with respect to the settlement embodied
25 in the Decree and supersedes all prior agreements and understandings, whether oral or
26 written, concerning the settlement embodied herein. The Parties acknowledge that there
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1 are no representations, agreements, or understandings relating to the settlement other than
2 those expressly contained in this Consent Decree.

3
4 **XXII. FINAL JUDGMENT**

5 91. Upon approval and entry of this Consent Decree by the Court, this Consent
6 Decree shall constitute a final judgment of the Court as to the United States and ANPI.

7
8 **XXIII. HEADINGS**

9 92. Headings to the Sections and Subsections of this Consent Decree are
10 provided for convenience and do not affect the meaning or interpretation of the
11 provisions of this Consent Decree.

12
13 **XXIV. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION**

14 93. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of
15 the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section III
16 (Applicability), Paragraph 3; Section VI (Compliance Requirements), Paragraphs 11–30;
17 Section VII (Reporting Requirements), Paragraphs 31–34; and Section XI (Information
18 Collection and Retention), Paragraphs 64–66, is restitution or required to come into
19 compliance with law.
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22 **XXV. APPENDICES**

- 23 94. The following Appendices are attached to and part of this Consent Decree:
24 Appendix A: Revised Incident Investigation Form;
25 Appendix B: Interim Procedures to Address RMP Preventive Maintenance
26 Program Requirements;
27 Appendix C: Emergency Shutoff Valve Locations; and
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Appendix D: Identified Deficiencies in Standard Operating Procedures.

DATED and entered this ____ day of _____, 20 __ .

Honorable _____
UNITED STATES DISTRICT JUDGE

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United*
2 *States v. Apache Nitrogen Products, Inc.*

3

4

FOR THE UNITED STATES OF AMERICA:

5

6

DATED this 1st day of October, 2020.

7

8

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

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13

DEBORAH A. GITIN (CA Bar No. 284947)
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
450 Golden Gate Ave., Room 7-6714
San Francisco, CA 94102
Phone: (415) 744-6488
Email: deborah.gitin@usdoj.gov

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Apache Nitrogen Products, Inc.*


FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

DATED this 26th day of October, 2020.


SUSAN PARKER BODINE
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency


AMY C. MILLER-BOWEN
Director, Enforcement and Compliance
Assurance Division
U.S. Environmental Protection Agency
Region 9


SYLVIA QUAST
Regional Counsel
U.S. Environmental Protection Agency
Region 9


MADELINE A. GALLO
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 9
Office of Regional Counsel

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United*
2 *States v. Apache Nitrogen Products, Inc.*

3

4 **FOR DEFENDANT APACHE NITROGEN PRODUCTS, INC.**

5

6 DATED this 19TH day of August, 2020.

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JEREMY BARRETT
President and General Manager

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APPENDIX A:

REVISED INCIDENT INVESTIGATION FORM



INCIDENT INVESTIGATION REPORT

Department:

Area:

EMPLOYEE INFORMATION

Name (Last, First, MI)	M <input type="checkbox"/> F <input type="checkbox"/>
Employee #	

EMPLOYEE STATUS

<input type="checkbox"/> Regular full-time	<input type="checkbox"/> Temporary	Usual Occupation:
<input type="checkbox"/> Regular part-time	<input type="checkbox"/> Contractor	Job Title:

INCIDENT INFORMATION

Exact Location of Incident:	Incident Date	Drug Policy Followed Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Time Since Shift Started
	Incident Time AM <input type="checkbox"/> PM <input type="checkbox"/>	Safety Notified Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Overtime Yes <input type="checkbox"/> No <input type="checkbox"/>
Supervisor	Notice Yes <input type="checkbox"/> No <input type="checkbox"/> Spill Report Yes <input type="checkbox"/> No <input type="checkbox"/>		

OSHA CLASSIFICATION / SEVERITY

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INVESTIGATION INFORMATION

Investigation Started on (Date & Time):
What was the activity just before the incident occurred?
What happened? (Provide a description of the incident, list events in chronological order and provide all relevant facts.)
Was a regulated hazardous substance involved? <input type="checkbox"/> Yes <input type="checkbox"/> No
[If yes, provide the name and amount of the regulated substance involved in the release (e.g. fire, explosion, toxic gas loss of containment) or near miss and the duration of the event.]
What are the consequences of the incident, if any? (Check as many as necessary.)
<input type="checkbox"/> Injuries <input type="checkbox"/> People evacuated <input type="checkbox"/> Impact to the environment <input type="checkbox"/> Fatalities <input type="checkbox"/> People sheltered in place <input type="checkbox"/> Others (please specify) _____
Please provide below the details. (e.g., number of injuries, fatalities, people evacuated and/or people sheltered in place, impact to the environment)
What was the emergency response action taken?

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APPENDIX B:

INTERIM PROCEDURES TO ADDRESS RMP PREVENTIVE MAINTENANCE PROGRAM REQUIREMENTS

A. ANPI has developed Preventive Master Plans for the following types of equipment in ANPI’s Risk Management Program covered processes based on Recognized and Generally Accepted Good Engineering Practices, applicable manufacturers’ recommendations, and/or prior operating experience:

1. Preventive Maintenance (“PM”) for Relief Valves;
2. PM for Fixed Equipment Inspection;
3. PM for Pressurized Vessel;
4. PM for Piping;
5. PM for Safety Interlocks; and
6. PM Rotating Equipment including Vibration Analysis.

B. ANPI’s PM Schedules for the above-identified equipment are contained in ANPI’s Computerized Maintenance Management System, referred to as Tabware. The PM Schedule as set up in Tabware contains the following information:

1. Equipment Number/Instrumentation Number;
2. Plant Area;
3. Associated P&ID information;
4. Frequency of inspection;
5. Date last inspected;
6. Date of next inspection; and
7. Remarks from the last inspection.

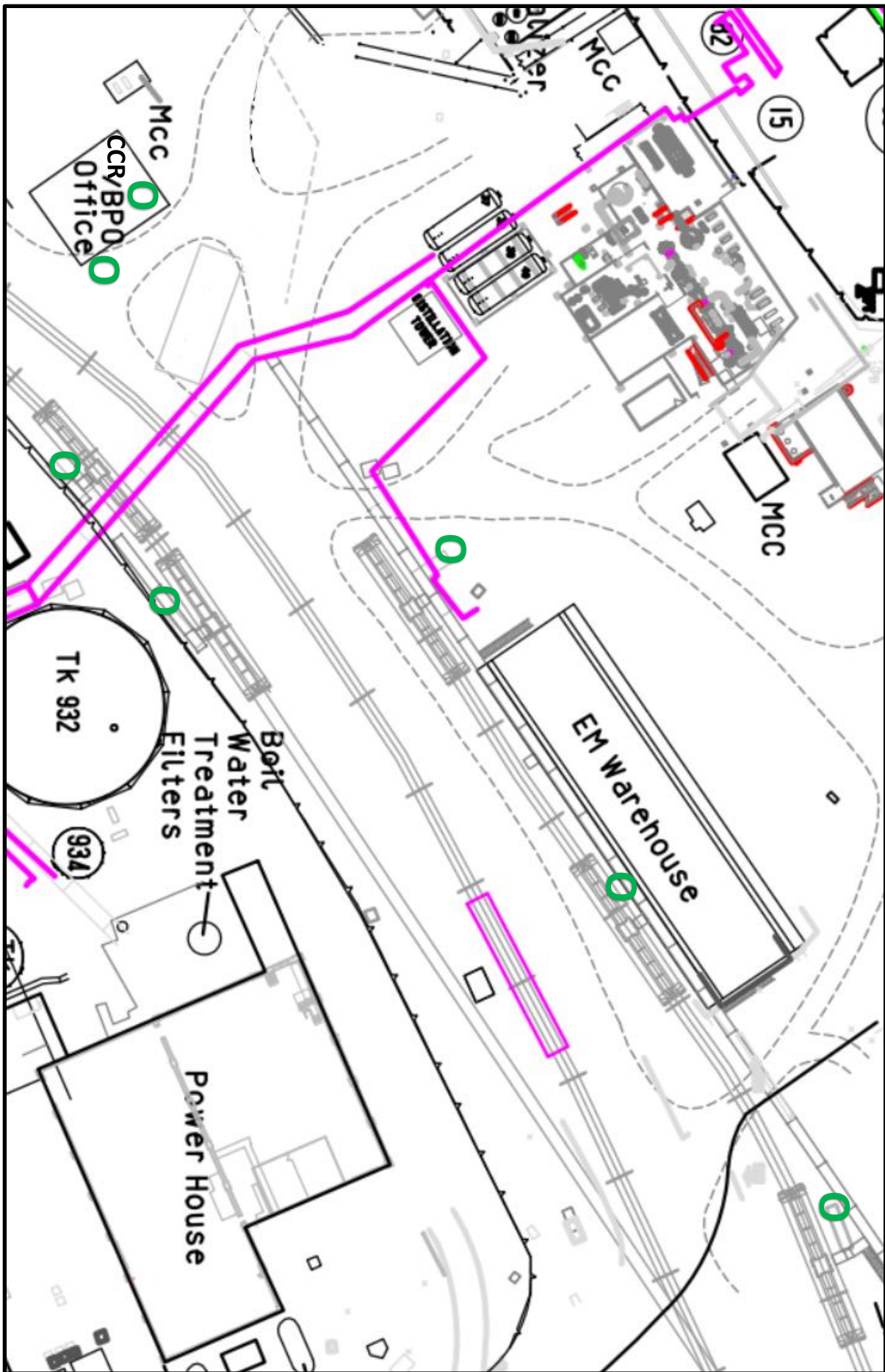
Until either (a) ANPI’s existing Tabware system is upgraded, or (b) ANPI purchases and commences operation of a new software system to fulfill the inspection, testing, and maintenance requirements set forth in 40 C.F.R. § 68.73(d) and 68.95(a)(2), as contemplated in Paragraph 14.b of this Consent Decree, ANPI shall perform the following:


1. The person at ANPI designated for planning and scheduling or the Maintenance Supervisor will manually generate, on a weekly basis, Preventive Maintenance Work Orders (PMWOs) from Tabware for the equipment identified in “A,” above, based on upcoming on-line or shutdown scheduled work and for equipment that is past due for PM.
2. On a weekly basis, person at ANPI designated for planning and scheduling or the Maintenance Supervisor will provide maintenance personnel their PM Schedules and PMWOs, and review them with maintenance personnel on a daily basis during maintenance planning meetings. The meetings will include a discussion of the:

- 1 a. PMWOs that are past due;
- 2 b. PM Schedule that will be due for the week; and
- 3 c. PM Schedule that will be due for the month.
- 4 3. Upon completion of a PMWO, the maintenance crew will return the PMWO to the
- 5 Maintenance Supervisor and discuss their findings.
- 6 4. After reviewing the findings and addressing any issues with the maintenance crew,
- 7 the Maintenance Supervisor will close the PMWO in Tabware.
- 8 5. Once the PMWO is closed, the PM Schedule in Tabware for that piece of equipment
- 9 will adjust accordingly on “Work Order Completion” to the next due date based on
- 10 the PM Schedule.
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APPENDIX C:
EMERGENCY SHUTOFF VALVE LOCATIONS



Note: Locations of ESV Push Buttons identified by  on the drawing above.

- Individual station shut offs at the bottom of the stairway of each load out station
- Shut off for all stations at the entrance to BPO Office and inside the Central Control Room (CCR).

APPENDIX D:

IDENTIFIED DEFICIENCIES IN STANDARD OPERATING PROCEDURES

Operating Procedure	Paragraph	EPA Comments
AMM-0010, Ammonia Tanker Operation	5.A.1.H., Caution	Add detail on how to ensure the liquid hose is connected to the liquid connection. Is there labeling, different fittings, or some other means of identification?
AMM-0010, Ammonia Tanker Operation	5.D.	Update this section to reflect that tanks 37 and 38 are no longer being used for anhydrous ammonia.
AMM-0010, Ammonia Tanker Operation	5.D.8.	Correct the formatting of subparagraphs C and D.
AMM-0010, Ammonia Tanker Operation	6.D.1.	Reword subparagraphs A-C into actions. For example, “Close Valve 5058 for the Apache Spot.”
AMM-0010, Ammonia Tanker Operation	7.	Specify who is responsible for emergency shutdown so in the event of an emergency, there is less chance of confusion. <i>See</i> 68.69(a)(1)(iv): Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.
AMM-0021, Aqua Ammonia Tank Batching	7.A.1.	Is it clear to operators where the STOP BATCH button is located? If not, consider adding a description of its location.
AMM-0075, Tank 94 Operation	5.A.1., Caution	Clarify that the high-high alarm notifies the Process Technician of the condition, and the Process Technician performs the necessary actions. Describe specific response actions for the Process Technician to take.
AMM-0075, Tank 94 Operation	8.A.2.	Reword subparagraphs A-B into actions. For example, “Close Valve NH3 LIQ-4767.”
AMM-0160, Ammonia Tanks 90-30 Operation	4.D.1.B., Note	Add details as to what constitutes low pressure.
AMM-0160, Ammonia Tanks 90-30 Operation	4.D.2. (Tank 92 Startup)	Quantify what “pressured up” means in this context.

1			Note that there are two sections numbered as 4.D. –
2			one for Tank 92, and one for Tank 93.
3	AMM-0160, Ammonia Tanks 90-30 Operation	4.D.1.B., Note (Tank 93 Startup)	Add details as to what constitutes low pressure.
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6	AMM-0160, Ammonia Tanks 90-30 Operation	4.D.1.E., Caution (Tank 93 Startup)	Consider adding a reminder to the tank scale that the filling limit is 80,000 lbs.
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9	AMM-0160, Ammonia Tanks 90-30 Operation	5.B.2., Table	Provide the operation pressure limits in addition to the alarm set point.
10			
11	AMM-0160, Ammonia Tanks 90-30 Operation	7	Specify who is responsible for emergency shutdown so in the event of an emergency, there is less chance of confusion. <i>See</i> 68.69(a)(1)(iv): Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.
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16	AMM-0160, Ammonia Tanks 90-30 Operation	8.B.	Update this section to reflect that tanks 37 and 38 are no longer being used for anhydrous ammonia.
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18	AOP-0060, NH3 Blowdown – Evaporators, Chiller and Blowdown Pot	8.D., Note	Specify whether valves 670 and 671 are hand valves, and specify what personal protective equipment should be used to conduct this part of the procedure.
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20	AO3-0102, AOP-3 Plant Startup	4.O.2.A., Caution	Specify maximum allowable pressure.
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22	AO3-0103, AOP-3 Plant Shutdown/Emergency Shutdown	9.	Specify who is responsible for emergency shutdown so in the event of an emergency, there is less chance of confusion. <i>See</i> 68.69(a)(1)(iv): Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.
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