

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

BARBARA FISHER,

Plaintiff,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

Civil No. 3:04-cv-00418

PERMA-FIX OF DAYTON, INC.,

Defendant.

AMENDED CONSENT DECREE

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	4
II.	APPLICABILITY	4
III.	DEFINITIONS.....	5
IV.	ACCRUED STIPULATED PENALTY AND CIVIL PENALTY	7
V.	COMPLIANCE REQUIREMENTS.....	9
VI.	REPORTING REQUIREMENTS	19
VII.	STIPULATED PENALTIES	21
VIII.	FORCE MAJEURE	25
IX.	DISPUTE RESOLUTION	26
X.	INFORMATION COLLECTION AND RETENTION	28
XI.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS.....	30
XII.	COSTS	31
XIII.	NOTICES.....	31
XIV.	EFFECTIVE DATE.....	33
XV.	RETENTION OF JURISDICTION	33
XVI.	MODIFICATION	33
XVII.	TERMINATION.....	33
XVIII.	PUBLIC PARTICIPATION	34
XIX.	SIGNATORIES/SERVICE.....	34
XX.	INTEGRATION	35
XXI.	FINAL JUDGMENT	35
XXII.	APPENDICES	35

WHEREAS, on December 2, 2004, Plaintiff Barbara Fisher filed a Complaint in this action, alleging that the Perma-Fix of Dayton, Inc. facility located in Dayton, Ohio (“Facility”) emitted odors, fumes, noxious materials, and other pollutants that caused Plaintiff Fisher and others in her community to suffer adverse health effects, damage to property, and other injuries, and thus violated (1) Ohio Administrative Code 3745-31-02 and 40 C.F.R. Part 52, (2) Ohio Administrative Code Chapter 3745-77, 42 U.S.C. §§ 7661a and 7661b, (3) 40 C.F.R. Part 63, Subpart DD, and (4) Ohio Administrative Code 3745-15-07 and 40 C.F.R. Part 52;

WHEREAS, Plaintiff-Intervenor the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed an Amended Complaint in Intervention in this action on August 24, 2006;

WHEREAS, the Amended Complaint in Intervention alleges that the Facility, an off-site waste recovery operation located in Dayton, Ohio, is a major source of hazardous air pollutants that failed to comply with specified requirements under the Clean Air Act, 42 U.S.C. § 7601 *et seq.* (“Act”);

WHEREAS, Perma-Fix of Dayton, Inc. (“Perma-Fix”) owned and operated the Facility at the time the Amended Complaint in Intervention was filed;

WHEREAS, the Amended Complaint in Intervention alleged that Perma-Fix (1) failed to comply with the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) regulations for Off-Site Waste Recovery Operations (“OSWRO”), in violation of 40 C.F.R. Part 63, Subpart DD; (2) failed to comply with the general NESHAP requirements at 40 C.F.R. Part 63, Subpart A incorporated by the OSWRO regulations; (3) failed to apply for and operate under a Title V permit in violation of 42 U.S.C. § 7661a(a), 40 CFR §§ 70.5(a) and 70.7(b), and Ohio Administrative Code Chapter 3745-77; (4) failed to apply for and obtain permits to install prior to installing various new emission sources, in violation of the Ohio State Implementation Plan (“SIP”), Ohio Admin. Code 3745-31-02; and (5) failed to respond to an information request issued by EPA, in violation of Section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a);

WHEREAS, the United States lodged a proposed consent decree with this Court on December 14, 2007 (“Consent Decree” or “Decree”) (Appendix A), between Perma-Fix and the United States, that would resolve the claims alleged in the Amended Complaint in Intervention against Perma-Fix;

WHEREAS, on February 12, 2008, the Court entered the Consent Decree, which required Perma-Fix to undertake certain compliance-related actions, including installing emission controls on various emission units and applying for permits to install and a Title V permit; perform three supplemental environmental projects; and pay a civil penalty of \$360,000;

WHEREAS, on February 18, 2008, Perma-Fix submitted a notice in accordance with Paragraph 5 of the Consent Decree, notifying the United States that it was to be acquired by

OGM Ltd. d/b/a Clean Water Limited (“Clean Water Limited”), which transfer was subsequently completed;

WHEREAS, Paragraph 5 of the Consent Decree provides that transfer of the Facility does not relieve Perma-Fix of its responsibility to remain responsible to implement the Consent Decree, unless (1) the transferee agrees to undertake the obligations under Sections V, VI, VII, VIII and XI; and (2) the United States agrees to relieve Perma-Fix of its responsibilities;

WHEREAS, the United States did not object to transfer of the Facility;

WHEREAS, pursuant to the asset purchase agreement between Perma-Fix and Clean Water Limited, Clean Water Limited assumed the obligations of Perma-Fix under the Consent Decree;

WHEREAS, obligations under the Consent Decree include submitting reports to EPA concerning activities performed pursuant to the Decree’s requirements and the Decree imposes stipulated penalties for failures to comply with its requirements;

WHEREAS, on June 18, 2012 and November 10, 2014, EPA issued letters alleging that Clean Water Limited failed to comply with several provisions of the Consent Decree for which Clean Water Limited is subject to stipulated penalties pursuant to Section VIII (Stipulated Penalties) of the Consent Decree (Appendix A);

WHEREAS, on February 23, 2016, EPA issued a notice of violation (“EPA NOV”) under Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), alleging that Clean Water Limited has violated Section 112 of the Act, 42 U.S.C. § 7412, *inter alia*, by failing to maintain an adequate minimum operating temperature in the Facility’s regenerative thermal oxidizer (“Existing RTO”) to ensure that the Existing RTO meets a ninety-five percent destruction efficiency in accordance with 40 C.F.R. § 63.693(f);

WHEREAS, the EPA NOV also alleged that Clean Water Limited has failed to maintain an adequate minimum operating pressure within the closed vent system to ensure that all emissions from the affected processes are vented to the Existing RTO, in violation of permit terms and conditions (or Best Available Technology under the SIP) established in accordance with an approved permitting program under Ohio Adm. Code Rule 3745-31-05;

WHEREAS, on November 25, 2014 and September 2, 2015, Ohio EPA through its contractual agent, the Regional Air Pollution Control Agency for Montgomery County (“RAPCA”), issued notices of violation alleging that Clean Water Limited violated its Permit when it failed to maintain required minimum temperatures at the Existing RTO and the required differential pressure in the closed vent system, which in turn led to emissions exceedances (“RAPCA NOVs”). Many of these violations were also alleged in the EPA NOV;

WHEREAS, the State of Ohio (the “State”), at the written request of the Director of the Ohio Environmental Protection Agency (“Ohio EPA”), is a party to this Amended Consent Decree;

WHEREAS, the State is joined in this proceeding as a permissive party pursuant to Rule 20 of the Fed. R. Civ. P., as the State is a party to the Amended Consent Decree and asserts a right to the relief sought by the United States arising out of the same or similar occurrences as alleged in the EPA NOV;

WHEREAS, Clean Water Limited does not admit any liability to the United States or the State of Ohio arising out of the transactions or occurrences alleged in the Notices of Violation attached as Appendices B and C of the Amended Consent Decree;

WHEREAS, Clean Water Limited does not admit any liability to the United States for stipulated penalties under the Consent Decree;

WHEREAS, on June 10, 2015, pursuant to an order of the Franklin County Court of Common Pleas, Franklin County, Ohio (“Franklin County Court”), in case number 15 CV 004550, Clean Water Limited was placed into receivership, that court having found that Clean Water Limited was insolvent or in imminent danger of insolvency (*see* Appendix E);

WHEREAS, the Franklin County Court appointed Mr. Kenneth B. Leachman of Insight Business Solutions, LLC (“Insight Solutions”) as receiver of the facility, to manage Clean Water Limited’s business operations, including the Facility at issue in this action;

WHEREAS, Clean Water Limited continues to own the Facility;

WHEREAS, Clean Water Limited enters into this Amended Consent Decree by and through the Receiver and has received authorization from the Franklin County Court to enter into this Amended Consent Decree;

WHEREAS, Perma-Fix does not object to the joinder of the State of Ohio in this action, nor does Perma-Fix object to substitution of the Amended Consent Decree for the Consent Decree and termination of the Consent Decree;

WHEREAS, Perma-Fix, Clean Water Limited, the State and the United States (the “Parties”) seek to substitute this Amended Consent Decree for the Consent Decree, given that Perma-Fix has transferred the Facility to Clean Water Limited;

WHEREAS, pursuant to Paragraph 102 of the Consent Decree, this Court retained jurisdiction for the purpose of entering orders to modify the Decree or effectuate or enforce compliance with the Consent Decree;

The Parties recognize, and the Court by entering this Amended Consent Decree finds, that this Amended Consent Decree has been negotiated by the Parties in good faith and will

avoid litigation among the Parties and that this Amended 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 ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

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

2. For purposes of this Amended Consent Decree, Clean Water Limited agrees that the Amended Complaint in Intervention states claims upon which relief may be granted, pursuant to Section 113 of the Act, 42 U.S.C. § 7413, and is hereby deemed amended to include claims of the United States asserted in the EPA NOV (attached as Appendix B); to include the State as a permissive party pursuant to Rule 20 of the Fed. R. Civ. P.; and to include claims of the State asserted in the RAPCA NOVs (attached as Appendix C).

II. APPLICABILITY

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

4. Clean Water Limited is hereby substituted for Perma-Fix by this Amended Consent Decree, which hereby replaces and supersedes the Consent Decree, and the Consent Decree is terminated. As a result of the termination, Perma-Fix has no remaining obligations under the terms of the Consent Decree. Perma-Fix has no obligations under the Amended Consent Decree.

5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Clean Water Limited of its obligation to ensure that the terms of the Amended Consent Decree are implemented, unless (1) the transferee agrees, in writing, to undertake the obligations required by Sections V, VI, VII, and X of this Amended Consent Decree and to be substituted for Clean Water Limited as a Party under the Amended Decree and thus be bound by the terms thereof; and (2) the United States consents

to relieve Clean Water Limited of its obligations. The United States' decision shall not be subject to judicial review. Notwithstanding the above, if the Franklin County Court approves the transfer of the Facility to a new owner as part of the receivership proceedings in case no. 15 CV 004550, condition (2) above shall not apply. At least thirty (30) Days prior to such transfer, Clean Water Limited shall provide a copy of this Amended Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of any written purchase and sale agreement reflecting the transferee's agreement to be substituted for Clean Water Limited in the Amended Consent Decree and to undertake the obligations in Sections V, VI, VII, and X, to EPA Region 5, the United States Attorney for the Southern District of Ohio, the United States Department of Justice, and the State in accordance with Section XIII (Notices). Any transfer of ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Amended Decree.

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

7. In any action to enforce this Amended Consent Decree, neither Clean Water Limited nor the transferee shall 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 Amended Consent Decree.

8. Purpose. The purpose of this Amended Consent Decree is to update the original Consent Decree with appropriate and necessary parties, amend the control requirements that apply to the Facility, and assure future compliance with the Amended Consent Decree, 40 C.F.R Part 63 General Provisions and Subpart DD, and the Permit. The purpose of this Amended Consent Decree is also to further the objectives of the Act, as enunciated in Section 101 of the Act, 42 U.S.C. 7401, and Chapter 3704 of the Ohio Revised Code. All plans, reports, construction, maintenance and other obligations in this Amended Consent Decree or resulting from the activities required by this Amended Consent Decree shall have the objective of causing Clean Water Limited to come into and remain in full compliance with the terms of its applicable permits and the Act, and Chapter 3704 of the Ohio Revised Code. This Amended Consent Decree replaces and supersedes the original Consent Decree entered by the Court on February 12, 2008.

III. DEFINITIONS

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

“Accrued Stipulated Penalty” shall mean stipulated penalties that the Defendant has incurred due to violations of the Consent Decree through the Date of Lodging.

“Amended Consent Decree” or “Amended Decree” shall mean this consent decree and all appendices attached hereto in Section XXII;

“Amended Complaint in Intervention” shall mean the Amended Complaint in Intervention filed by the United States in this action;

“Consent Decree” or “Decree” shall mean the consent decree entered by the Court on February 12, 2008;

“Continuous Monitoring System” or “CMS” shall mean all equipment necessary to meet the data acquisition and availability requirements of this Amended Consent Decree, 40 C.F.R. Part 63, the Ohio SIP, and Clean Water Limited’s (or Transferee’s) air pollution control permits, that is used to sample, condition (if applicable), analyze, and provide a record of emissions or process or control system parameters;

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

“Clean Water Limited” or “Defendant” shall mean Clean Water Limited;

“Date of Lodging” shall mean the date that this Amended Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Southern District of Ohio pending public comment and Court action;

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

“Effective Date” shall have the definition provided in Section XIV (Effective Date);

“Existing RTO” or “Existing Regenerative Thermal Oxidizer” shall mean the regenerative thermal oxidizer that is currently in place at the Facility;

“Facility” shall mean Clean Water Limited’s off-site waste and recovery facility located at 300 Cherokee Drive, Dayton, Ohio;

“Financial Information” shall mean the financial documents identified in Appendix D that were submitted by Clean Water Limited;

“Heat Exchanger” shall mean the equipment immediately upstream of the New RTO/TO that is used to remove moisture from the vent stream prior to the vent stream entering into the New RTO/TO;

“Malfunction” shall have the meaning in 40 C.F.R. § 63.2;

“New RTO/TO” or “New Regenerative Thermal Oxidizer” shall mean the new thermal oxidizer or regenerative thermal oxidizer required by Section V (Compliance Requirements) of the Amended Consent Decree;

“Ohio EPA” shall mean the Ohio Environmental Protection Agency, its contractual agencies, including RAPCA, and any of its successor departments or agencies;

“Paragraph” shall mean a portion of this Amended Decree identified by an arabic numeral;

“Parties” shall mean the United States, the State of Ohio and its contractual agent RAPCA, Clean Water Limited, and Perma-Fix (except that “Parties” shall not include Perma-Fix for purposes of Paragraphs 31, 60 and 89);

“Perma-Fix” shall mean Perma-Fix of Dayton, Inc., the former owner and operator of the Facility and initial defendant and signatory to the Consent Decree;

“RAPCA” shall mean the Regional Air Pollution Control Agency for Montgomery County, Ohio and any of its successor departments or agencies;

“Section” shall mean a portion of this Amended Decree identified by a roman numeral;

“State” shall mean the State of Ohio;

“Permit” shall mean the final permit to install no. 08-04938 issued by Ohio EPA regarding the Facility with an effective date of March 2, 2009; and

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

IV. ACCRUED STIPULATED PENALTY AND CIVIL PENALTY

10. Clean Water Limited shall pay a total combined Accrued Stipulated Penalty and civil penalty of \$15,000, as set forth below. The amount of the total combined Accrued Stipulated Penalty and civil penalty is based upon an analysis of Clean Water Limited’s ability to pay performed by a financial expert following submission by Clean Water Limited of the financial information (“Financial Information”) listed in Appendix D.

11. Clean Water Limited shall pay a combined Accrued Stipulated Penalty and civil penalty of \$7,500 to the United States in three installments. The first installment shall be paid within thirty (30) days after the Effective Date, the second installment shall be paid within sixty (60) days after the Effective Date, and the third installment shall be paid within ninety (90) days after the Effective Date, together with interest accruing on any balance from thirty (30) days after the date on which the Amended Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging. Clean Water Limited shall pay the Accrued Stipulated Penalty due by Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Clean Water Limited by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Southern District of Ohio thirty (30) Days after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Clean Water Limited shall use to identify all payments required to be made in accordance with this Amended Consent Decree. The FLU will provide the payment instructions to:

Kenneth B. Leachman
Insight Business Solutions, LLC
1463 Briar Meadow Drive
Columbus, Ohio 43235
(614) 537-7246
kbleachman@columbus.rr.com

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

At the time of payment, Clean Water Limited shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIII; and (iii) to EPA in accordance with Section XIII (Notices). Such notice shall state that the payment is for the combined Accrued Stipulated Penalty and civil penalty owed pursuant to the Amended Consent Decree in *Barbara Fisher v. Perma-Fix of Dayton, Inc.* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-08318/1.

12. Clean Water Limited shall pay a civil penalty of \$7,500 to the State in three installments of \$2,500 by delivering a cashier’s or certified check drawn on an account with sufficient funds made payable to “Treasurer, State of Ohio” delivered to Scott Hainer, or his successor, Paralegal, Ohio Attorney General’s Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. The first installment shall be paid within thirty (30) days after the Effective Date, the second installment shall be paid within sixty (60) days after the Effective Date, and the third installment shall be paid within ninety (90) days after the Effective Date, together with interest accruing on any balance from thirty (30) days after the date on which the Amended Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

13. Clean Water Limited shall not deduct any penalties paid under this Amended Consent Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal or State or local income tax.

V. COMPLIANCE REQUIREMENTS

A. New Regenerative Thermal Oxidizer

14. Within one year of the Effective Date of the Amended Consent Decree, Clean Water Limited shall complete the installation and begin operation of a new regenerative thermal oxidizer or non-regenerative thermal oxidizer (“New RTO/TO”) in accordance with the attached approved RTO Work Plan (Appendix F). The New RTO/TO shall achieve and maintain compliance with one of the following limits: either (1) destroy total organic compounds (“TOC”), less methane and ethane, and hazardous air pollutants (“HAP”) vented to the New RTO/TO by 95 percent or more on a weight basis; or (2) a total incinerator outlet concentration of TOC, less methane and ethane, and HAP of less than or equal to 20 parts per million by volume (“ppmv”) on a dry basis corrected to three percent oxygen at all times emissions are vented to the New RTO/TO, including periods of startup, shutdown, and Malfunction of any process units that send emissions to the New RTO/TO, in accordance with 40 C.F.R. §§ 63.693 and 63.695(e). Should Clean Water Limited choose compliance option (2) above, it shall take the measurement at the outlet of the New RTO/TO or in the stack prior to emitting to the atmosphere.

15. To minimize or prevent weather-related impacts to the New RTO/TO, Clean Water Limited shall weather-protect the New RTO/TO and its components to the extent practicable and as necessary, which may include weatherproof and climate-controlled cabinets, weather screening, strategic location, insulation, and other methods or techniques that weather-protect the New RTO/TO and its components.

16. Clean Water Limited shall utilize a Heat Exchanger, air dryer, and/or other moisture removal technology upstream of the New RTO/TO to decrease moisture in the vent stream to the extent practicable prior to entering the New RTO/TO. For purposes of this Paragraph, the Heat Exchanger, air dryer, and/or other moisture removal technology includes all equipment and components required to be installed as part of the approved RTO Work Plan (Appendix F). The Heat Exchanger, air dryer, and/or other moisture removal technology installed shall ensure that adequate moisture is removed from the vent stream to minimize or eliminate, to the extent practicable, freezing of pipes and other operational problems associated with moisture that could impact the continuous and proper operation of the New RTO/TO. The Heat Exchanger, air dryer, and other moisture removal technology shall be operated in accordance with the approved RTO Work Plan.

17. Clean Water Limited shall install, calibrate, maintain, and continuously operate at least one temperature monitoring device capable of measuring and recording the combustion zone temperature of the New RTO/TO in accordance with 40 C.F.R. § 63.693(f)(3)(i-ii), no less

than once every 15 minutes, as required by 40 C.F.R. § 63.695(e)(1)(i). Clean Water Limited shall measure the combustion zone temperature of the New RTO/TO at least once every 15 minutes with the temperature monitoring device, and use all the data obtained, in accordance with 40 C.F.R. Part 63, Subpart DD, to calculate the 24-hour average temperature in accordance with 40 C.F.R. § 63.695(e).

18. Clean Water Limited shall install, calibrate, maintain, and continuously operate at least one pressure monitoring device capable of measuring and recording the pressure within the closed vent system no less than once every 15 minutes as required by 40 C.F.R. § 63.695(c)(1)(ii)(C). The data obtained with the pressure monitoring device must meet the requirements of the OSWRO MACT. Other pressure monitor(s) shall be placed either (1) at the point within the closed vent system located farthest away from the fan and New RTO/TO, or (2) at the end of each vent line of the closed vent system if there is more than one line leading to the New RTO/TO, and shall be observed and manually, or electronically, recorded at least once per day on days the emission unit is operating to ensure that negative pressure is maintained at this point. These monitors shall be used to demonstrate that a negative pressure is maintained within the closed vent system at all times one or more processes tied into the closed vent system are operating in accordance with 40 C.F.R. § 63.693(c)(1)(ii).

B. Performance Testing of New RTO/TO

19. Within one hundred eighty (180) Days after startup of the New RTO/TO, Clean Water Limited shall conduct performance testing of the New RTO/TO to demonstrate compliance with one of the applicable emission limits set forth in Paragraph 14.

20. Clean Water Limited shall conduct the performance testing of the New RTO/TO as required in Paragraph 19 above in accordance with the following subparagraphs:

- a. During performance testing, Clean Water Limited shall continuously monitor and record the temperature of the combustion zone and pressure differential in the closed vent system. Clean Water Limited shall monitor temperature at the combustion zone according to the procedures set forth in Paragraph 17 and the requirements of 40 C.F.R. §§ 63.693(f)(3) and 63.695(e). Clean Water Limited shall monitor pressure differential in the closed vent system according to the procedures set forth in Paragraph 18 and 40 C.F.R. § 63.693(c);
- b. Each performance test must be conducted under representative operating conditions and provide the highest expected emissions of TOC and HAP under such operating conditions, unless otherwise specified in this Amended Consent Decree;
- c. Each performance test shall consist of a minimum of three test runs. Each test run must be no less than one hour in length;

- d. Each performance test shall measure emissions of TOC and HAP using EPA Reference Method 18 or 25A as provided in 40 C.F.R. § 63.694(l);
- e. Each performance test must include sample and velocity traverses using EPA Reference Method 1; stack gas velocity and volumetric flow rate using EPA Reference Method 2; gas analysis for the determination of dry molecular weight using EPA Reference Method 3; and determination of moisture content in stack gases using EPA Reference Method 4;
- f. Each performance test shall record and report emissions of TOC and HAP in units of the applicable standard;
- g. Each performance test shall record and report measured combustion zone temperatures and pressure differentials in the closed vent system obtained during the testing. The measured combustion zone temperatures must then be used to establish an operating range within which Clean Water Limited must maintain and operate the New RTO/TO at all times emissions are vented to it to ensure compliance in accordance with Paragraph 24, and provided for in 40 C.F.R. § 63.695(e); and
- h. Each performance test must measure and record the temperature of the vent stream after the Heat Exchanger but before entering into the New RTO/TO. This information may be obtained by an existing thermocouple located in the vent stream between the Heat Exchanger and the New RTO/TO at least once every 15 minutes during performance testing.

21. No later than sixty (60) Days before the date the performance test is to be conducted, Clean Water Limited shall submit to EPA for approval pursuant to Paragraph 29, with a copy to Ohio EPA, a proposed test protocol that contains, at a minimum, the following information:

- a. Name and address of the Facility;
- b. Name, title, telephone number, and e-mail address of contact person at the Facility;
- c. Name, contact person, telephone number, and e-mail address for the testing firm that will conduct the performance testing;
- d. The proposed dates and times for the performance testing;
- e. Identify with which emission limit under 40 C.F.R. § 63.695(e) and Paragraph 14 Clean Water Limited intends to demonstrate compliance (either destroy TOC, less methane and ethane, and HAP vented to the new RTO/TO by 95 percent or more on a weight basis or achieve a total

incinerator outlet concentration of TOC, less methane and ethane, and HAP of less than or equal to 20 ppmv on a dry basis corrected to three percent oxygen);

- f. Process flow diagram(s) describing all emission units controlled by the New RTO/TO;
- g. Facility schematic drawing(s) identifying the location of each emission unit controlled by the New RTO/TO and the location of the New RTO/TO;
- h. Air pollution control and capture system diagram(s) for the closed vent system and New RTO/TO, including the location of all ducted pick-up points, canopies, hoods, *etc.*;
- i. For each emissions unit controlled by the New RTO/TO, identify the maximum design process or operating rate(s) and identify the process and operating rate(s) to be achieved during the performance testing;
- j. Identification of the maximum design process and operating rate(s) of the New RTO/TO and closed vent system;
- k. Identification of the maximum process and operating rate(s) of the New RTO/TO and closed vent system expected or anticipated to be achieved during performance testing;
- l. Identify the highest production level expected or anticipated to yield the highest TOC and HAP emissions;
- m. Provide description of all monitoring equipment to be used and monitoring activities to be conducted during performance testing;
- n. Identify the EPA Reference methods and describe how they will be used to measure TOC and HAP concentrations;
- o. Provide the number of test runs planned, and for each such run, the length of the test run, sampling rate and sample volume; and
- p. Describe the planned test conditions that will represent “representative operating conditions and highest expected emissions” of TOC and HAP, and provide documentation to support selection of such conditions, including but not limited to historical operational data.

22. Clean Water Limited shall conduct each performance test in accordance with the approved performance test protocol and the 2009 Clean Air Act National Stack Testing

Guidance issued by EPA, which can be found at <https://www3.epa.gov/ttnemc01/guidlnd/gd-050.pdf>.

23. Final Performance Test Report. Clean Water Limited must submit a Final Performance Test Report to EPA and Ohio EPA containing the results of TOC and HAP performance testing, including as an addendum to the completed Final Performance Test Report information regarding partial, incomplete, or cancelled test runs, no later than sixty (60) Days after completing the performance testing. The Final Performance Test Report shall include, at a minimum, the following information:

- a. Name and address of the Facility;
- b. Identification of all emission unit(s) vented to the New RTO/TO;
- c. Identification of all emission unit(s) operating during the performance testing;
- d. Date(s) and time(s) of each performance test;
- e. Name and address of testing company or agency contracted to conduct the performance testing;
- f. Description of the test location, type(s) of process(es) tested, and control device(s) used;
- g. Description of the methods and procedures used for conducting the performance testing and monitoring during the performance test (including a statement of the source methods), any EPA Reference Methods used (but not copies thereof), any modifications to EPA Reference Method(s) implemented during performance testing, and methods other than EPA Reference Methods used for the performance testing;
- h. Other background information sufficient to describe operations and conditions during the performance testing;
- i. Summaries of applicable emission limits, emissions data for TOC and HAP, inlet and outlet concentrations of TOC and HAP, and temperature measurements obtained during the performance testing;
- j. Summary of all process data as it affects emissions (including sample times, sample volumes, rates, air flows, gas flows, *etc.*);
- k. Discussion of errors, both real and apparent, associated with each performance test;

- l. All recorded operating ranges, monitored parameters, and other information pertinent to understanding the process and control device operation during testing, including combustion zone temperature, pressure differential within the closed vent system, and temperature of the vent stream between the Heat Exchanger and the New RTO/TO;
 - m. Sampling port location and dimensioned cross section, showing any flow disturbances including elbows, dampers, fans, constrictions, and control equipment;
 - n. Complete results, with examples of calculations using performance testing data, showing equations used and actual results in equation form on the same or adjacent pages, using applicable equations shown in EPA Reference Methods;
 - o. Copies of all raw field data;
 - p. Copies of all laboratory reports, with chain of custody record, if applicable;
 - q. Raw production data;
 - r. Test log, if applicable;
 - s. Calibration procedures and results, if applicable; and
 - t. Names and titles of all employees, agents, and/or contractors who substantively participated in the performance testing, data analysis, and sample analysis.
24. Following completion of performance testing as required by Paragraphs 19, 20 and 22 above, Clean Water Limited shall use the measured combustion zone temperatures to determine the minimum combustion zone temperature above which the New RTO/TO must be operated to attain and maintain compliance with applicable emission limits. CWL shall request, through its permit applications, that the minimum combustion zone temperature established in accordance with this Paragraph be incorporated into Clean Water Limited's underlying permits to install and operate as federally enforceable terms and conditions.

C. VOC Continuous Emissions Monitoring Systems

25. Clean Water Limited may, at its discretion, elect to install one or more VOC continuous emissions monitoring systems ("VOC CEMS") to measure either the concentration of VOC at the outlet of the New RTO/TO or the VOC concentration at the inlet and outlet of the New RTO/TO. If Clean Water Limited elects to install a VOC CEMS, the VOC CEMS must be

installed, certified, maintained, and continuously operated at all times emissions are vented to the New RTO/TO.

26. If Clean Water Limited elects to install a VOC CEMS, it shall certify the VOC CEMS in accordance with the requirements of 40 C.F.R. Part 60, Appendix B, Performance Specification 8 or 8A, no later than the date of initial performance testing pursuant to Paragraph 19 of this Amended Consent Decree. If Clean Water Limited elects to install a VOC CEMS and use it to demonstrate compliance with applicable emissions limits (or destruction efficiency requirements), then Clean Water Limited must develop a QA/QC plan in accordance with 40 C.F.R. Part 60, Appendix F, Procedure 1.

D. Preventive Maintenance and Operations Plan

27. By no later than one hundred twenty (120) Days after the startup of the New RTO/TO or within one hundred twenty (120) Days after the Effective Date of this Amended Consent Decree, whichever is later, Clean Water Limited shall submit to EPA and Ohio EPA for approval pursuant to Paragraph 29 of the Amended Consent Decree, a plan to implement enhanced maintenance and operation of the closed vent system, New RTO/TO, and all other pollution control equipment, moisture removal equipment, monitoring equipment, and process equipment. The plan shall be called the Preventive Maintenance and Operation Plan (“PMO Plan”). The PMO Plan shall be a compilation of Clean Water Limited’s approaches for exercising good air pollution control practices and for minimizing emissions. The PMO Plan shall provide for continuous operation of the New RTO/TO with minimization of emissions. The PMO Plan shall address all operating periods, including periods of startup, shutdown and Malfunction. If Clean Water Limited makes any material changes to the PMO Plan, such changes shall be summarized and reported to EPA and Ohio EPA, pursuant to Section VI (Reporting Requirements) of the Amended Consent Decree. Such changes may be implemented immediately, but nonetheless shall be subject to approval under Paragraphs 29-32 of this Amended Decree.

28. The PMO Plan shall include the following:
- a. Daily, weekly, monthly, quarterly, semi-annual, and annual inspections and maintenance practices and associated schedules for all affected sources pursuant to 40 C.F.R. Part 63, Subpart DD, including process units, tanks, control devices, closed vent systems, continuous temperature monitoring systems, and continuous pressure monitoring systems.
 - b. A recordkeeping system to document inspection and maintenance activities performed; upsets and Malfunctions relating to the control device, closed vent system, or other process equipment; monitoring systems, readings, and downtime; and all corrective actions taken or to be taken to address known or identified problems and issues.

- c. A data gathering system capable of developing quarterly summaries of all items identified in Subparagraph 28(b) above.
- d. A detailed description of procedures to be used when conducting inspections and maintenance activities and the job title(s) of those responsible for conducting such inspections and maintenance activities.
- e. A detailed description of preventive maintenance procedures and activities in place and to be implemented to ensure that the closed vent system and New RTO/TO are maintained and operating within the required ranges established during the most recent performance test that demonstrates compliance with applicable limits during all times that emissions are vented through them.
- f. A detailed description of preventive maintenance procedures and activities in place and to be implemented to ensure all monitoring systems are installed, calibrated, maintained, and operated at all times.
- g. A detailed description of proposed corrective actions taken or to be taken in response to maintenance, process unit, control device, closed vent system, monitoring system, or other system upsets and malfunctions. The initial plan must include known issues and associated corrective actions that have occurred with the Existing RTO, to the extent applicable to the New RTO/TO (for example, low/high temperature alarms, flame-outs, seal failures, switching valve failures, freezing of lines, overheating of control boxes, plugging of ceramic media, high moisture, and other issues), process units, closed vent system, monitoring systems, or other systems.
- h. Identification and quantification of replacement parts that will be maintained in inventory for quick replacement of parts that fail, break, or malfunction.
- i. If Clean Water Limited elects to install a VOC CEMS in accordance with this Amended Consent Decree, the PMO Plan must also include the QA/QC Plan required by Paragraph 26 as well as a monitoring and maintenance plan for the VOC CEMS to ensure continuous operation of the VOC CEMS at all times, including periods of process unit startup, shutdown, and Malfunction.
- j. A detailed description of the system that CWL chooses to utilize to control organic compound emissions from fume hood vents from the Building G laboratory, which may be a carbon adsorption system or the New RTO/TO. If a carbon adsorption system is utilized, the PMO Plan shall include the following requirements: (i) the method by which CWL shall

monitor the concentration level of the organic compounds in the exhaust vent from the carbon adsorption system on a regular schedule; (ii) replacement of either the existing carbon canister with a new carbon canister or the existing carbon in the control device with fresh carbon, at a frequency based either on manufacturer recommendations/industry standards or once carbon breakthrough is indicated, whichever occurs first; (iii) measurement of the concentration level of the organic compounds in the exhaust vent stream with a detection instrument that is appropriate for the composition of organic constituents in the vent stream and routinely calibrated to measure the organic concentration level expected to occur at breakthrough; and (iv) records associated with these requirements kept on site and available for inspection for at least 3 years.

- k. The PMO Plan does not relieve Clean Water Limited of its responsibility to prepare and implement any other plans, including those required by the General Provisions at 40 C.F.R. Part 63; 40 C.F.R. Part 63, Subpart DD; or other applicable regulations.

29. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted for approval by EPA pursuant to this Amended Consent Decree, EPA, after consultation with Ohio EPA, shall in writing: (a) approve the submission; (b) disapprove the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission. If EPA has not approved or disapproved the submission within ninety (90) days, Clean Water Limited may proceed to implement the plan, report, or other item.

30. If the submission is approved pursuant to Paragraph 29, Clean Water Limited shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 29(b) or (c), Clean Water Limited shall, upon written direction from EPA, after consultation with Ohio EPA, take all actions required by the approved plan, report, or other item that EPA, after consultation with Ohio EPA, determines are technically severable from any disapproved portions, subject to Clean Water Limited's right to dispute only the specified conditions or the disapproved portions, under Section IX (Dispute Resolution).

31. If the submission is disapproved in whole or in part pursuant to Paragraph 29(c) or (d), Clean Water Limited shall, within forty-five (45) Days or such other time as the Parties agree to in writing, correct all deficiencies, which can include providing additional information where doing so would correct the deficiency at issue, and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Clean Water Limited shall proceed in accordance with the preceding Paragraph.

32. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with Ohio EPA, may again require Clean Water Limited to correct any deficiencies, in accordance with the preceding Paragraphs, or may themselves correct any deficiencies, subject to Clean Water Limited's right to invoke Dispute Resolution and the right of EPA and the State to seek stipulated penalties as provided in the preceding Paragraphs.

33. Any stipulated penalties applicable to the original submission, as provided in Section VII (Stipulated Penalties), shall accrue during the forty-five (45) day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Clean Water Limited's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

34. Permits. Where any compliance obligation under this Section requires Clean Water Limited to obtain a federal, state, or local permit or approval, Clean Water Limited shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Clean Water Limited may, but shall not be obligated to, seek relief under the provisions of Section VIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Clean Water Limited has submitted timely and complete applications, responded to requests for additional information, and has taken all other actions necessary to obtain all such permits or approvals.

35. As part of the application for the preconstruction permits required pursuant to Paragraph 34, within twelve (12) months after the Effective Date of this Amended Consent Decree, Clean Water Limited shall request Ohio EPA to include as non-expiring obligations all of the compliance obligations enumerated in this Amended Consent Decree that are referenced below in subparagraphs (a) through (d), in a permit that is federally enforceable and is issued under authority independent of the State's authority to issue Title V permits, such that the compliance obligations become and remain "applicable requirements" as that term is defined in 40 C.F.R. § 70.2. Clean Water Limited shall seek the permit, or the modification of an existing permit, to require compliance with the following:

- a. All requirements relating to the New RTO/TO set forth in Paragraphs 14 and 15.
- b. All requirements relating to the Heat Exchanger, air dryer, or other moisture removal technology set forth in Paragraph 16.
- c. All requirements relating to the temperature and pressure monitoring systems set forth in Paragraphs 17-18.

- d. Requirements to maintain, follow, and periodically review and update the PMO Plan, set forth at Section V.D of this Amended Consent Decree.

36. Permits: Standards. This Amended Consent Decree shall not terminate before the emissions limitations and standards set forth in Paragraph 35(a) are incorporated into Clean Water Limited's federally-enforceable construction permit(s) and any issued Title V operating permits for the Facility.

37. For any permit applications required by this Section that are filed after the Effective Date, Clean Water Limited shall submit to EPA in the manner set forth in Section XIII (Notices), a copy of each application, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any public comment opportunity. If, as of the Effective Date, Clean Water Limited has already received any permit necessary to implement the requirements of this Amended Consent Decree, and if EPA has not already received such permits, then no later than thirty (30) Days after the Effective Date, Clean Water Limited shall submit copies of such permits to EPA in the manner set forth in Section XIII (Notices).

VI. RECORDKEEPING AND REPORTING REQUIREMENTS

38. Clean Water Limited shall submit the following reports regarding compliance with the requirements of the Amended Consent Decree:

- a. By January 31st, April 30th, July 31st, and October 31st of each year after the Date of Lodging of this Amended Consent Decree, until termination of this Amended Decree pursuant to Section XVII, Clean Water Limited shall submit a quarterly report for the preceding three months that shall include the status of any construction or compliance measures; completion of milestones and dates of completion; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; operation and maintenance activities implemented in accordance with the approved RTO Work Plan, PMO Plan and requirements of this Amended Consent Decree; and reports to state agencies.

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

Clean Water Limited of its obligation to provide the notice required by Section VIII (Force Majeure).

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

40. Clean Water Limited shall also submit quarterly excess emission and monitoring system performance reports. For purposes of this Amended Consent Decree, an excess emission is any deviation, within the meaning of 40 C.F.R. §§ 63.683(f)(1-6) or 63.695(e)(4), that occurs at the Facility. The quarterly excess emissions and monitoring system performance reports must include, at a minimum, the following information:

- a. The total source operating time during the reporting period.
- b. The date and time of commencement and completion of each time period of excess emissions.
- c. The magnitude of excess emissions.
- d. Identify each period of excess emissions that occurs during startup, shutdown, and Malfunctions.
- e. The nature and cause of any period of excess emissions.
- f. Describe corrective action(s) taken and time of corrective action(s) taken to minimize or eliminate the excess emissions.
- g. Identify preventive measures adopted to minimize or prevent an excess emission cause or event from recurring.
- h. Where no excess emissions occur during a given reporting period, such information must be stated in the quarterly report.
- i. Each period during which any continuous monitoring system or monitoring device was inoperative.
- j. Identify any continuous monitoring system or monitoring device that was inoperative, the cause(s) thereof, and any corrective action(s) taken.
- k. Where there is no period of time during a reporting quarter during which a

continuous monitoring system or monitoring device was inoperative, such information must be stated in the quarterly report.

41. All reports under this Section VI shall be submitted to the persons designated in Section XIII (Notices). The reports required by Paragraphs 38 and 40 may be submitted as a single quarterly report, so long as the single report includes all information identified in the respective Paragraphs.

42. Each report submitted by Clean Water Limited under this Section shall be signed by an official of the submitting party and include the following certification:

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

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

44. The reporting requirements of this Amended Consent Decree do not relieve Clean Water Limited of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement, including all applicable recordkeeping and reporting requirements of 40 C.F.R. Part 63, Subpart DD.

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

VII. STIPULATED PENALTIES

46. Clean Water Limited shall be liable for stipulated penalties to the United States and the State for violations of this Amended Consent Decree as specified below in Table 1, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Amended Consent Decree, including any work plan or schedule approved under this Amended Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

Table 1

Amended Consent Decree Requirement	Amended Consent Decree Paragraph or Section Violated	Stipulated Penalty
a. Failure to pay the combined Accrued Stipulated Penalty and civil penalty to the United States	Section IV, ¶ 11	\$1500 per Day for each such Day of failure, all of which would go to the United States
b. Failure to pay the civil penalty to the State	Section IV, ¶ 12	\$1500 per Day for each such Day of failure, all of which would go to the State
c. Failure to install the New RTO/TO within one year of the Effective Date of the Amended Consent Decree	Section V, ¶ 14	\$1000 per Day for each such violation
d. Failure to install and operate the New RTO/TO, Heat Exchanger, air dryer and other moisture removal technology in accordance with each of the elements of the approved RTO Work Plan	Section V, ¶¶ 14-16, Appendix F	\$500 per Day for each such violation
e. Failure to comply with one of the limits chosen in Paragraph 14	Section V, ¶ 14	\$500 per Day for each such violation
f. Failure to install, calibrate, maintain, and continuously operate at least one temperature and one pressure monitoring device in accordance with Paragraphs 17 and 18, except for periods of monitoring system malfunctions, repairs associated with monitoring	Section V, ¶¶ 17 and 18	\$500 per Day for each such violation

Amended Consent Decree Requirement	Amended Consent Decree Paragraph or Section Violated	Stipulated Penalty
system malfunctions, and required monitoring system quality assurance or quality control activities		
g. Failure to conduct performance testing in accordance with approved testing protocol and submit test report in accordance with Section V.B (Performance Testing Protocol)	Section V, ¶¶ 19-23	\$1,000 per Day for each such violation
h. Failure to achieve and maintain the minimum combustion zone temperature established in accordance with Paragraph 24	Section V, ¶ 24	\$500 per Day for each such violation
i. Failure to apply to incorporate provisions of the Amended Consent Decree into the Title V Renewable Operating Permit or underlying permits or other federally enforceable permit	Section V, ¶¶ 24 and 35	\$500 per Day for each such violation
j. Failure to implement a Preventive Maintenance and Operations Plan in accordance with Section V	Section V, ¶¶ 27-28	\$500 per Day for each such violation
k. Violation of any reporting and/or recordkeeping requirement required under Section VI (Recordkeeping and Reporting Requirements)	Section VI	\$250 per Day for each such violation

47. 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 Amended Decree.

48. The United States, or the State, or both, may seek stipulated penalties under this Section by sending a joint written demand to Clean Water Limited, or by either sovereign sending a written demand to Clean Water Limited, with a copy simultaneously sent to the other sovereign. Either sovereign may waive stipulated penalties or reduce the amount of stipulated penalties it seeks, in the unreviewable exercise of its discretion and in accordance with this Paragraph. Where both sovereigns seek stipulated penalties for the same violation of this Amended Consent Decree, Clean Water Limited shall pay 50 percent to the United States and 50 percent to the State. Notwithstanding the above, the United States shall receive 100 percent of any stipulated penalty under Paragraph 46.a, and the State shall receive 100 percent of any stipulated penalty under Paragraph 46.b. Where only one sovereign demands stipulated penalties for a violation, and the other sovereign does not join in the demand within fifteen (15) Days of receiving the demand, or timely joins in the demand but subsequently elects to waive or reduce stipulated penalties for that violation, Clean Water Limited shall pay the full stipulated penalties due for the violation to the sovereign making the demand less any amount paid to the other sovereign.

49. Stipulated penalties shall continue to accrue as provided in Paragraph 47, 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 or the State that is not appealed to the Court, Clean Water Limited shall pay accrued penalties determined to be owing, together with interest, to the United States or the State, as applicable, within thirty (30) Days of the effective date of the agreement or the receipt of EPA's or the State's decision or order.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Clean Water Limited shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Clean Water Limited shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

50. Clean Water Limited shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 11, 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. Clean Water Limited shall pay stipulated penalties owing to the State in the manner set forth and required by Paragraph 12, except that the payment shall be accompanied by a letter that shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

51. If Clean Water Limited fails to pay stipulated penalties according to the terms of this Amended Consent Decree, Clean Water Limited 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 the State from seeking any remedy otherwise provided by law for Clean Water Limited's failure to pay any stipulated penalties.

52. The payment of penalties and interest, if any, shall not alter in any way Clean Water Limited's obligation to complete the performance of the requirements of this Amended Consent Decree.

53. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' or the State's exclusive remedy for violations of this Amended Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States and the State expressly reserve the right to seek any other relief either one deems appropriate for Clean Water Limited's violation of this Amended Decree or applicable law, including but not limited to an action against Clean Water Limited for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Amended Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Amended Consent Decree.

VIII. FORCE MAJEURE

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

55. If any event occurs or has occurred that may delay the performance of any obligation under this Amended Consent Decree, whether or not caused by a force majeure event, Clean Water Limited shall provide notice orally or by electronic or facsimile transmission to EPA, Ohio EPA, and RAPCA, within 72 hours of when Clean Water Limited first knew that the event might cause a delay. Within seven (7) Days thereafter, Clean Water Limited shall provide in writing to EPA and Ohio EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Clean Water Limited'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 Clean Water Limited, such event may cause or contribute to an endangerment to public health, welfare or the environment. Clean Water Limited shall include with any notice all available

documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Clean Water Limited from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Clean Water Limited shall be deemed to know of any circumstance of which Clean Water Limited, any entity controlled by Clean Water Limited, or Clean Water Limited's contractors knew or should have known.

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

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

58. If Clean Water Limited elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, Clean Water Limited 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 Clean Water Limited complied with the requirements of Paragraphs 54 and 55. If Clean Water Limited carries this burden, the delay at issue shall be deemed not to be a violation by Clean Water Limited of the affected obligation of this Amended Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

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

60. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Amended Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Clean Water Limited sends the United States and the State a

written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) 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 or the State, as applicable, shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, Clean Water Limited invokes formal dispute resolution procedures as set forth below.

61. Formal Dispute Resolution. Clean Water Limited shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State 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 Clean Water Limited's position and any supporting documentation relied upon by Clean Water Limited.

62. The United States or the State, as applicable, shall serve its Statement of Position within forty-five (45) Days of receipt of Clean Water Limited's Statement of Position. The United States' or the State's, as applicable, 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 or the State, as applicable. The United States' or the State's, as applicable, Statement of Position shall be binding on Clean Water Limited, unless Clean Water Limited files a motion for judicial review of the dispute in accordance with the following Paragraph.

63. Clean Water Limited may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XIII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' or the State's, as applicable, Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Clean Water Limited'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 Amended Consent Decree.

64. The United States or the State, as applicable, shall respond to Clean Water Limited's motion within the time period allowed by the Local Rules of this Court. Clean Water Limited may file a reply memorandum, to the extent permitted by the Local Rules.

65. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Amended Consent Decree, in any dispute brought under Paragraph 58 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Amended Consent Decree; the adequacy of the performance of work undertaken pursuant

to this Amended Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Clean Water Limited shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. Other Disputes. Except as otherwise provided in this Amended Consent Decree, in any other dispute brought under Paragraph 59, Clean Water Limited shall bear the burden of demonstrating that its position complies with this Amended Consent Decree and better furthers the purposes of the Amended Consent Decree.

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

X. INFORMATION COLLECTION AND RETENTION

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

- a. monitor the progress of activities required under this Amended Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Amended Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Clean Water Limited or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Clean Water Limited's compliance with this Amended Consent Decree.

68. Until five years after the termination of this Amended Consent Decree, Clean Water Limited 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, or that come into its possession or control, and that relate in any manner to Clean Water Limited's performance of its obligations under this Amended Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. Clean Water Limited shall instruct its contractors and agents to preserve all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Clean Water Limited's performance of its obligations under this Amended Consent Decree, 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 the State, Clean Water Limited shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

69. At the conclusion of the information-retention period provided in the preceding Paragraph, Clean Water Limited shall notify the United States and the State at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, Clean Water Limited shall deliver within a reasonable time any such documents, records, or other information to EPA or Ohio EPA. Clean Water Limited may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Clean Water Limited asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Clean Water Limited. However, no documents, records, or other information created or generated pursuant to the requirements of this Amended Consent Decree shall be withheld on grounds of privilege.

70. Clean Water Limited 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 trade secret under Ohio Rev. Code 1333.61(D). As to any information that Clean Water Limited seeks to protect as CBI and/or trade secret, Clean Water Limited shall follow the procedures set forth in 40 C.F.R. Part 2 as to EPA and Ohio Adm. Code 3745-49-03 as to Ohio EPA.

71. This Amended 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 the State pursuant to applicable federal or state laws, regulations, rules, or permits, nor does it limit or affect any duty or obligation of Clean Water Limited to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, rules, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

72. This Amended Consent Decree resolves the claims of the United States for violations of the terms of the Consent Decree through the Date of Lodging of this Amended Consent Decree. This Amended Consent Decree also resolves the claims of the United States and the State for the violations alleged in the Notices of Violations relating to the Facility sent to Clean Water Limited by EPA and Ohio EPA prior to the Date of Lodging referenced in Appendix B and Appendix C.

73. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Amended Consent Decree. This Amended Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions. The United States and the State 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, Clean Water Limited's Facility, whether related to the violations addressed in this Amended Consent Decree or otherwise.

74. Notwithstanding any other provision of this Amended Consent Decree, the United States and the State reserve, and this Amended Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Amended Consent Decree, if the Financial Information provided by Clean Water Limited is false or, in any material respect, inaccurate.

75. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Clean Water Limited's violations, Clean Water Limited shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 72.

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

77. This Amended Consent Decree does not limit or affect the rights of Clean Water Limited or of the United States or the State against any third parties, not party to this Amended Consent Decree, nor does it limit the rights of third parties, not party to this Amended Consent Decree, against Clean Water Limited, except as otherwise provided by law.

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

79. Clean Water Limited shall not challenge the lawfulness and/or reasonableness of any Amended Consent Decree requirements and limitations that are incorporated into a federally enforceable permit issued under authority independent of the State's authority to issue Title V permits as set forth in Paragraph 35 above.

XII. COSTS

80. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the Accrued Stipulated Penalty, civil penalty or any stipulated penalties due but not paid by Clean Water Limited.

XIII. NOTICES

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

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-08318/1

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-2-1-08138/1

As to EPA:

Compliance Tracker
U.S. Environmental Protection Agency
Region 5 (AE-17J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Luis Oviedo
U.S. Environmental Protection Agency
Region 5 (R-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Defendant may, upon written notification from EPA, submit each report, plan, or other deliverable to EPA electronically at R5airenforcement@epa.gov. All electronic submissions must include a courtesy copy to vuilleumier.kevin@epa.gov and oviedo.luis@epa.gov.

As to Ohio EPA:

electronically through Ohio EPA's eBusinessCenter: Air Services, Stars 2, at ebiz.epa.ohio.gov; or if hard copies are required for submittal:

Jenny Marsee, Administrator
The Regional Air Pollution Control Agency
117 South Main Street
Dayton, Ohio 45422-3280, and

Jim Kavalec
Ohio EPA – Division of Air Pollution Control
Lazarus Government Center
50 W. Town St., Suite 700
P.O. Box 1049
Columbus, Ohio 43216

As to Clean Water Limited:

Kenneth B. Leachman
Insight Business Solutions, LLC
1463 Briar Meadow Drive
Columbus, Ohio 43235
(614) 537-7246
kbleachman@columbus.rr.com

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

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

XIV. EFFECTIVE DATE

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

XV. RETENTION OF JURISDICTION

85. The Court shall retain jurisdiction over this case until termination of this Amended Consent Decree, for the purpose of resolving disputes arising under this Amended Decree or entering orders modifying this Amended Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Amended Decree.

XVI. MODIFICATION

86. The terms of this Amended Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by the United States, the State, and Clean Water Limited, or an entity bound by the Amended Consent Decree pursuant to Paragraph 3, as applicable. Where the modification constitutes a material change to this Amended Decree, it shall be effective only upon approval by the Court.

87. Any disputes concerning modification of this Amended Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 65, 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).

XVII. TERMINATION

88. After Clean Water Limited has completed the requirements of Section V (Compliance Requirements), has thereafter maintained satisfactory compliance with this Amended Consent Decree for a period of three years, has complied with all other requirements of this Amended Consent Decree, and has paid the Accrued Stipulated Penalty, civil penalty, and any accrued stipulated penalties as required by this Amended Consent Decree, Clean Water Limited may serve upon the United States and the State a Request for Termination, stating that

Clean Water Limited has satisfied those requirements, together with all necessary supporting documentation.

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

90. If the United States, after consultation with the State, does not agree that the Amended Decree may be terminated, Clean Water Limited may invoke Dispute Resolution under Section IX. However, Clean Water Limited shall not seek Dispute Resolution of any dispute regarding termination until sixty (60) Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

91. This Amended Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Amended Consent Decree disclose facts or considerations indicating that the Amended Consent Decree is inappropriate, improper, or inadequate. Clean Water Limited consents to entry of this Amended Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Amended Consent Decree by the Court or to challenge any provision of the Amended Decree, unless the United States has notified Clean Water Limited in writing that it no longer supports entry of the Amended Decree.

XIX. SIGNATORIES/SERVICE

92. Each undersigned representative of Clean Water Limited, Perma-Fix, the State of Ohio, and the Assistant Attorney General for the Environment and Natural Resources Division or his designee of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Amended Consent Decree and to execute and legally bind the Party he or she represents to this document.

93. This Amended Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Clean Water Limited agrees to accept service of process by mail with respect to all matters arising under or relating to this Amended 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.

XX. INTEGRATION

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

XXI. FINAL JUDGMENT

95. Upon approval and entry of this Amended Consent Decree by the Court, this Amended Consent Decree shall constitute a final judgment of the Court as to the United States, the State, Perma-Fix and Clean Water Limited. 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.

XXII. APPENDICES

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

“Appendix A” is the 2007 Perma-Fix Consent Decree;

“Appendix B” is the 2016 EPA Notice of Violation;

“Appendix C” are the 2014 and 2015 RAPCA Notices of Violation;

“Appendix D” is the List of Financial Information Submitted by Clean Water Limited;

“Appendix E” is the Franklin County Court Order Dated June 10, 2015; and

“Appendix F” is the approved RTO Work Plan.

Dated and entered this ___ day of _____, 2017.

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

8/25/17

Date



BRUCE S. GELBER
Deputy Assistant Attorney General
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice



ARNOLD S. ROSENTHAL
Senior Attorney
CATHERINE BANERJEE ROJKO
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611


BENJAMIN C. GLASSMAN
United States Attorney
MARK T. D'ALESSANDRO
Civil Chief
BRANDI STEWART
Assistant United States Attorney
Southern District of Ohio

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

8/29/17
Date



EDWARD NAM
Director, Air and Radiation Division
U.S. Environmental Protection Agency, Region 5



LUIS OVIEDO
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
Office of Regional Counsel

FOR THE STATE OF OHIO:

MICHAEL DeWINE
OHIO ATTORNEY GENERAL



AARON S. FARMER (Ohio Bar No. 0080251)

Assistant Attorney General

Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, Ohio 43215-3400

Telephone: (614) 466-2766

Facsimile: (614) 644-1926

Aaron.Farmer@OhioAttorneyGeneral.gov

Attorney for the State of Ohio

9/11/17
Date

FOR CLEAN WATER LIMITED:

8-10-2017


Date



KENNETH B. LEACHMAN
Insight Business Solutions, LLC
Receiver for Clean Water Limited

FOR PERMA-FIX OF DAYTON, INC.:

8-14-17
Date

By: 
MARK DUFF
Vice-President