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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

11)
 12 United States of America)
 13 999 18th Street, South Terrace, Suite 370)
 14 Denver, Colorado 80202)
 15 Plaintiff)
 16 v.)
 17 CHEMOIL CORPORATION)
 18 4 Embarcadero Ctr., Suite 3400)
 19 San Francisco, California 94111-4106)
 20 Chemoil)
 21)
 22)
 23)
 24)
 25)
 26)
 27)
 28)

Civil Case No: 16-5538

CONSENT DECREE

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I. INTRODUCTION

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint in this action concurrently with this Consent Decree, against Chemoil Corporation (“Chemoil” or “Defendant”) pursuant to Sections 205(b) and 211(d) of the Clean Air Act (“CAA” or “the Act”), as amended, 42 U.S.C. §§ 7524(b) and 7545(d), for Chemoil’s alleged violations of Section 211(o) of the CAA, 42 U.S.C. § 7545(o), and the regulations prescribed thereunder at 40 C.F.R. Part 80, Subpart M (the “Renewable Fuel Standard Regulations”);

WHEREAS, the Complaint alleges that at various times in 2011, 2012, and 2013 Chemoil exported from the United States shipments of biomass-based diesel without retiring sufficient D4 Renewable Identification Numbers (“RINs”) to meet its biomass-based diesel Renewable Volume Obligations (“RVOs”) under 40 C.F.R. §§ 80.1427 and 80.1430(b) in violation of 40 C.F.R. §§ 80.1430(f), and 80.1460(c) and (f);

WHEREAS, the Complaint further alleges that Chemoil failed to submit to the EPA its annual reports containing its biomass-based diesel RVOs for the 2011, 2012, and 2013 reporting years as required under 40 C.F.R. § 80.1451(a)(1)(vi) in violation of 40 C.F.R. § 80.1460(f);

WHEREAS, the United States asserts that Chemoil is liable for civil penalties and other relief for all violations alleged in the United States’ Complaint;

WHEREAS, Chemoil does not admit to any violations or any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

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

III. APPLICABILITY

1
2 5. The obligations of this Consent Decree apply to and are binding upon the United
3 States, and upon Chemoil and any successors, assigns, or other entities or persons otherwise
4 bound by law.

5
6 6. Unless approved by the Parties in writing, until this Consent Decree is terminated
7 in accordance with Section XVIII (Termination), any material change in ownership, operation, or
8 the corporate status of Chemoil shall not alter Chemoil’s responsibilities under this Consent
9 Decree including its obligation to ensure that all terms of the Consent Decree are implemented.
10 Any material change in ownership, operation, or the corporate status of Chemoil must be
11 explicitly conditioned upon the transferee’s or assignee’s written agreement to assume Chemoil’s
12 obligations under this Consent Decree, and Chemoil shall condition any material change in the
13 ownership, operation, or corporate status upon the transferee’s or assignee’s written agreement to
14 execute a modification to this Consent Decree that shall make the terms and conditions of this
15 Consent Decree applicable to the transferee or assignee. For purposes of this Paragraph, a
16 “material change in ownership, operation or corporate status” excludes (a) any internal
17 reorganization of Chemoil or its affiliates that does not result in a change to the ultimate
18 corporate parent of Chemoil or (b) the sale or transfer of less than ten percent (10%) of the shares
19 of Chemoil to a non-affiliated person.
20
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22

23 7. At least 30 Days prior to any material change in Chemoil’s ownership, operation,
24 or corporate status as described in Paragraph 6 of this Consent Decree, Chemoil shall provide a
25 copy of this Consent Decree to the proposed owner and shall simultaneously provide written
26 notice of the prospective material change, together with a copy of the proposed written
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1 agreement, to the EPA and the United States Department of Justice, in accordance with Section
2 XIV of this Decree (Notices).

3 8. Any material change that does not comply with Paragraphs 6 and 7 of this
4 Consent Decree shall be considered void for purposes of enforcing Chemoil's compliance with
5 this Consent Decree and further shall constitute a violation of this Consent Decree subject to the
6 stipulated penalty set forth in Section VIII (Stipulated Penalties) of this Consent Decree.
7

8 9. Chemoil shall provide a copy of this Consent Decree to all officers, employees,
9 and agents whose duties might reasonably include compliance with any provision of this Decree,
10 as well as to any contractor retained to perform work required under this Consent Decree.
11 Chemoil shall condition any such contract upon performance of the work in conformity with the
12 terms of this Consent Decree.
13

14 10. In any action to enforce this Consent Decree, Chemoil shall not raise as a defense
15 the failure by any of its officers, directors, employees, agents, or contractors to take any actions
16 necessary to comply with the provisions of this Consent Decree.
17

18 IV. DEFINITIONS

19 11. Terms used in this Consent Decree that are defined in the Act or in regulations at
20 40 C.F.R. Part 80 shall have the meanings assigned to them in the Act or such regulations, unless
21 otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this
22 Consent Decree, the following definitions shall apply:
23

24 a. "**Act**" or "**CAA**" means the Clean Air Act, as amended, 42 U.S.C. §§
25 7401 *et seq.*;

26 b. "**Chemoil**" shall mean Chemoil Corporation;
27
28

- 1 c. **“Complaint”** shall mean the complaint filed by the United States in this
2 action;
- 3 d. **“Consent Decree”** or **“Decree”** shall mean this Consent Decree;
- 4 e. **“Date of Lodging”** means the date upon which this Consent Decree is
5 lodged with the Court for public comment pursuant to 28 C.F.R. § 50.7;
- 6 f. **“Day”** shall mean a calendar day unless expressly stated to be a business
7 day. In computing any period of time under this Consent Decree, where the last
8 day would fall on a Saturday, Sunday, or federal holiday, the period shall run until
9 the close of business of the next business day;
- 10 g. **“EPA”** shall mean the United States Environmental Protection Agency
11 and any of its successor departments or agencies;
- 12 h. **“Force Majeure”** shall have the meaning set forth in Section IX of this
13 Decree;
- 14 i. **“Effective Date”** shall have the definition provided in Section XV;
- 15 j. **“Interest”** shall mean interest at the rate specified in 28 U.S.C. § 1961 as
16 of the date of lodging of this Consent Decree;
- 17 k. **“Paragraph”** shall mean a portion of this Decree identified by an Arabic
18 numeral;
- 19 l. **“Parties”** shall mean the United States and Chemoil;
- 20 m. **“Section”** shall mean a portion of this Decree identified by a roman
21 numeral; and
- 22 n. **“United States”** shall mean the United States of America, acting on behalf
23 of EPA.
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V. CIVIL PENALTY

1
2 12. Within 30 Days of the Effective Date of this Consent Decree Chemoil shall pay to
3 the United States a civil penalty of twenty-seven million U.S. dollars (\$27,000,000.00) in
4 accordance with the provisions of this Section V. If any portion of the civil penalty due to the
5 United States is not paid when due, Chemoil shall pay Interest on the amount past due accruing
6 from the effective date of this Consent Decree through the date payment is actually made by
7 Defendant and shall be liable for all charges, costs, fees, and penalties established by law for the
8 benefit of a creditor or of the United States in securing payment. Interest payment under this
9 Paragraph shall be in addition to any stipulated penalty due under Section VIII (Stipulated
10 Penalties) of this Consent Decree.
11

12
13 13. Chemoil shall pay the civil penalty due *via* FedWire Electronic Funds Transfer
14 (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to
15 Chemoil by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the
16 District of California. The payment instructions provided by the FLU will include a
17 Consolidated Debt Collection System (“CDCS”) number, which Chemoil shall use to identify all
18 payments required to be made in accordance with this Consent Decree. The FLU will provide
19 the payment instructions to the parties listed by Chemoil for notice under Section XIV (Notices)
20 of this Consent Decree.
21

22
23 14. At the time of payment, Chemoil shall send notice that payment has been made:
24 (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati
25 Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United
26 States via email or regular mail in accordance with Section XIV (Notices) of this Consent
27 Decree; and (iii) to EPA in accordance with Section XIV (Notices) of this Consent. Such notice
28

1 shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in
2 United States v. Chemoil Corporation and shall reference the civil action number, CDCS
3 Number and DOJ case number 90-5-2-1-11066.

4
5 15. Payments made pursuant to this Section (Civil Penalty) or Section VIII
6 (Stipulated Penalties) are civil penalties within the meaning of the Internal Revenue Code, 26
7 U.S.C. §162(f). Chemoil shall not deduct any penalties paid under this Consent Decree pursuant
8 to this Section or Section VIII (Stipulated Penalties) in calculating its U.S. federal income tax.

9
10 **VI. RIN RETIREMENT REQUIREMENTS**

11 16. Chemoil shall retire a total 65 million valid D4 RINs according to the following
12 schedule:

13 a. No later than December 31, 2016, Chemoil shall retire at least 10 million
14 valid D4 RINs;

15 b. No later than March 31, 2017, Chemoil shall retire a cumulative total of at
16 least 25 million valid D4 RINs;

17 c. No later than June 30, 2017, Chemoil shall retire a cumulative total of at
18 least 40 million valid D4 RINs; and

19 d. No later than September 30, 2017, Chemoil shall retire a cumulative total
20 of at least 65 million valid D4 RINs.

21
22 17. The RINs that Chemoil retires under Paragraph 16, above, shall be valid D4 RINs.
23 Any 2014 D4 RINs retired under Paragraph 16, above, must be retired no later than December 1,
24 2016 and any 2015 D4 RINs retired under Paragraph 16, above, must be retired no later than
25 March 31, 2017. Stipulated penalties for Chemoil's failure to timely retire RINs in accordance
26 with Paragraph 16, above, are provided for in Paragraph 29, below.
27
28

1 22. The certification required under Paragraph 21, above, shall include the following
2 statement:

3 I certify under penalty of law that I have examined and am familiar with the information
4 submitted in this document and all attachments and that this document and all
5 attachments were prepared under my direction or supervision in accordance with a
6 system designed to assure that qualified personnel properly gather and evaluate the
7 information submitted. Based on my inquiry of the person or persons who manage the
8 system, or those persons directly responsible for gathering the information, the
9 information submitted is, to the best of my knowledge and belief, true, accurate, and
10 complete. I am aware that there are significant penalties for submitting false information,
11 including the possibility of fines and imprisonment for knowingly and willfully
12 submitting a materially false statement.
13

14 23. All reports and submittals required by this Decree shall be sent to the persons or
15 entities designated in Section XIV (Notices) of this Consent Decree.
16

17 24. The reporting requirements of this Consent Decree do not relieve Chemoil of any
18 reporting obligations required by the CAA or its implementing regulations, or any other
19 reporting obligation required by any federal, state, or local law, regulation, permit, or other
20 requirement.
21

22 25. Any information submitted pursuant to this Consent Decree may be used by the
23 United States in any proceeding to enforce the provisions of this Consent Decree and as
24 otherwise permitted by law.
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VIII. STIPULATED PENALTIES

26. Chemoil shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure) or reduced by the United States in its unreviewable discretion. A violation includes failing to perform any obligation required by the terms of this Consent Decree according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

27. **Late Payment of Civil Penalty.** If any amounts due to EPA under Paragraph 12 (Civil Penalty) are not paid by the required date, Chemoil shall be in violation of this Consent Decree and shall pay, as a stipulated penalty of \$10,000 per Day for each Day that the payment is late during the first 15 Days and \$20,000 for each Day thereafter. This penalty applies in addition to any interest which may accrue on any unpaid civil penalty amount.

28. **Reporting Requirements.** The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VII (Reporting Requirements):

Penalty Per Violation Per Day Period of Noncompliance:

- a. \$1,000 1st through 14th Day;
- b. \$5,000 15th through 30th Day; and
- c. \$10,000 31st Day and beyond.

29. **RIN Retirement Requirements.** If Chemoil fails to fully comply with the RIN retirement requirements in Paragraphs 16 and 17, Chemoil shall pay a stipulated penalty of \$5,000 per Day for each Day that the Chemoil is late meeting its RIN retirement requirements during the first 20 Days, \$10,000 for Days 21-30 and \$37,500 for each Day thereafter. In

1 addition, Chemoil shall pay a one-time stipulated penalty of \$0.50 per RIN not retired after 5
2 Days.

3 30. **Use of Invalid RINs.** For the use of invalid RINs under Paragraph 16, EPA may
4 in its unreviewable discretion require Chemoil to pay a one-time stipulated penalty of up to \$0.40
5 per invalid RIN.
6

7 31. Stipulated penalties under this Section shall begin to accrue on the Day after
8 performance is due or on the Day that the violation occurs, whichever is applicable, and shall
9 continue to accrue until performance is satisfactorily completed or until the violation ceases.
10 Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.
11 Stipulated penalties shall accrue regardless of whether the United States provides the Defendant
12 notice of the violation(s) of this Consent Decree.
13

14 32. Chemoil shall pay any stipulated penalty within 30 Days of receiving the United
15 States' written demand.
16

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

19 34. Stipulated penalties shall continue to accrue as provided in Paragraph 31, during
20 any Dispute Resolution, but need not be paid until the following:
21

- 22 a. If the dispute is resolved by agreement between the Parties or by a
23 decision of EPA in favor of EPA that is not appealed to the Court, Chemoil shall
24 pay accrued stipulated penalties determined by such agreement or decision to be
25 owing, together with interest, to the United States within 30 Days of the effective
26 date of the agreement or the receipt of EPA's decision or order.
27
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1 b. If the dispute is appealed to the Court and the United States prevails in
2 whole or in part, Chemoil shall pay all accrued stipulated penalties determined by
3 the Court to be owing, together with interest, within 60 Days of receiving the
4 Court's decision or order, except as provided in subparagraph c, below.

5
6 c. If any Party appeals the District Court's decision, Chemoil shall pay all
7 accrued penalties determined by the appellate court to be owing, together with
8 interest, within 15 Days of receiving the final appellate court decision.

9
10 d. If Chemoil ultimately prevails in any Dispute Resolution, stipulated
11 penalties and interest shall not be assessed.

12 35. Chemoil shall pay stipulated penalties owing to the United States in the manner
13 set forth and with the confirmation notices required by Paragraph 14, except that the transmittal
14 letter shall state that the payment is for stipulated penalties and shall state for which violation(s)
15 the penalties are being paid.

16
17 36. If Chemoil fails to pay stipulated penalties according to the terms of this Consent
18 Decree, Chemoil shall be liable for Interest on such penalties accruing as of the date payment
19 became due. Nothing in this Paragraph shall be construed to limit the United States from
20 seeking any remedy otherwise provided by law for Chemoil's failure to pay any stipulated
21 penalties.

22
23 37. The payment of penalties and Interest, if any, shall not alter in any way Chemoil's
24 obligation to complete the performance of the requirements of this Consent Decree.

25 38. **Non-Exclusivity of Remedy.** Subject to the provisions of Section XII (Effect of
26 Settlement/Reservation of Rights), the United States expressly reserves the right to seek any
27 other relief it deems appropriate for Chemoil's violation of this Consent Decree or applicable
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1 law, including but not limited to an action against Chemoil for statutory penalties, additional
2 injunctive relief, mitigation or offset measures, and/or contempt.

3 **IX. FORCE MAJEURE**

4
5 39. "Force Majeure," for purposes of this Consent Decree, is defined as any event
6 arising from causes beyond the control of Chemoil, of any entity controlled by Chemoil, or of
7 Chemoil's contractors that delays or prevents the performance of any obligation under this
8 Consent Decree despite Chemoil's best efforts to fulfill the obligation. The requirement that
9 Chemoil exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate
10 any potential Force Majeure event and best efforts to address the effects of any potential Force
11 Majeure event (a) as it is occurring and (b) following the potential force majeure, such that the
12 delay and any adverse effects of the delay are minimized. Force Majeure does not include
13 Chemoil's financial inability to perform any obligation under this Consent Decree.

14
15 40. If any event occurs or has occurred that may delay the performance of any
16 obligation under this Consent Decree, whether or not caused by a Force Majeure event, Chemoil
17 shall provide notice orally or by electronic or facsimile transmission to the United States within
18 72 hours of when Chemoil first knew that the Force Majeure event might cause a delay. Within
19 7 Days thereafter, Chemoil shall, in accordance with Section XIV. (Notices), provide in writing
20 to the United States an explanation and description of the reasons for the delay; the anticipated
21 duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a
22 schedule for implementation of any measures to be taken to prevent or mitigate the delay or the
23 effect of the delay; Chemoil's rationale for attributing such delay to a force majeure event if it
24 intends to assert such a claim; and a statement as to whether, in the opinion of Chemoil, such
25 event may cause or contribute to an endangerment to public health, welfare or the environment.
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1 Chemoil shall include with any notice all available documentation supporting the claim that the
2 delay was attributable to a Force Majeure. Failure to comply with the above requirements shall
3 preclude Chemoil from asserting any claim of Force Majeure for that event for the period of time
4 of such failure to comply, and for any additional delay caused by such failure. Chemoil shall be
5 deemed to know of any circumstance of which Chemoil, any entity controlled by Chemoil, or
6 Chemoil's contractors knew or should have known.
7

8 41. If the United States agrees that the delay or anticipated delay is attributable to a
9 Force Majeure event, the time for performance of the obligations under this Consent Decree that
10 are affected by the Force Majeure event will be extended by the United States for such time as is
11 necessary to complete those obligations. An extension of the time for performance of the
12 obligations affected by the Force Majeure event shall not, of itself, extend the time for
13 performance of any other obligation. The United States will notify Chemoil in writing of the
14 length of the extension, if any, for performance of the obligations affected by the Force Majeure
15 event.
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18 42. If the United States does not agree that the delay or anticipated delay has been or
19 will be caused by a Force Majeure event, the United States will notify Chemoil in writing of the
20 basis for its decision.
21

22 43. If Chemoil elects to invoke the dispute resolution procedures set forth in Section
23 X (Dispute Resolution), it shall do so no later than 10 Days after receipt of the United States'
24 notice. In any such proceeding, Chemoil shall have the burden of demonstrating by a
25 preponderance of the evidence that the delay or anticipated delay has been or will be caused by a
26 Force Majeure event, that the duration of the delay or the extension sought was or will be
27 warranted under the circumstances, that best efforts were exercised to avoid and mitigate the
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1 effects of the delay, and that Chemoil complied with the requirements of Paragraphs 39 and 40.
2 If Chemoil carries this burden, the delay at issue shall be deemed not to be a violation by
3 Chemoil of the affected obligation of this Consent Decree identified to the United States and the
4 Court.
5

6 **X. DISPUTE RESOLUTION**

7 44. Unless otherwise expressly provided for in this Consent Decree, the dispute
8 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising
9 under or with respect to this Consent Decree. Chemoil's failure to seek resolution of a dispute
10 under this Section shall preclude Chemoil from raising any such issue as a defense to an action
11 by the United States to enforce any obligation of Chemoil arising under this Decree.
12

13 45. **Informal Dispute Resolution.** Any dispute subject to Dispute Resolution under
14 this Consent Decree shall first be the subject of informal negotiations. The dispute shall be
15 considered to have arisen when Chemoil sends the United States a written Notice of Dispute.
16 Such Notice of Dispute shall state clearly the matter in dispute. The period of informal
17 negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is
18 modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations,
19 then the position advanced by the United States shall be considered binding unless, within 45
20 Days after the conclusion of the informal negotiation period, Chemoil invokes formal dispute
21 resolution procedures as set forth below.
22

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

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

9
10 48. Chemoil may seek judicial review of the dispute by filing with the Court and
11 serving on the United States, in accordance with Section XIV (Notices), a motion requesting
12 judicial resolution of the dispute. The motion must be filed within 20 Days of receipt of the
13 United States' Statement of Position pursuant to the preceding Paragraph. The motion shall
14 contain a written statement of Chemoil's position on the matter in dispute, including any
15 supporting factual data, analysis, opinion, or documentation, and shall set forth the relief
16 requested and any schedule within which the dispute must be resolved for orderly
17 implementation of the Consent Decree.

18
19 49. Except as otherwise provided in this Decree, in any dispute brought under
20 Paragraph 46 of this Decree (Formal Dispute Resolution), Chemoil shall bear the burden of
21 demonstrating that its position complies with this Decree and the CAA and that it is entitled to
22 relief under applicable principles of law. The United States reserves the right to argue that its
23 position is reviewable only on the administrative record and must be upheld unless arbitrary and
24 capricious or otherwise not in accordance with law, and Chemoil reserves the right to argue to
25 the contrary.
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1 50. The invocation of dispute resolution procedures under this Section shall not, by
2 itself, extend, postpone, or affect in any way any obligation of Chemoil under this Consent
3 Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with
4 respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but
5 payment shall be stayed pending resolution of the dispute as provided in Paragraph 48. If
6 Chemoil does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as
7 provided in Section VIII (Stipulated Penalties).
8

9 **XI. INFORMATION COLLECTION AND RETENTION**

10 51. Until 5 years after the termination of this Consent Decree, Chemoil shall retain,
11 and shall instruct its contractors and agents to preserve, all non-identical copies of all documents,
12 records, or other information (including documents, records, or other information in electronic
13 form) in its or its contractors' or agents' possession or control, or that come into its or its
14 contractors' or agents' possession or control, and that relate in any manner to Chemoil's
15 performance of its obligations under this Consent Decree. This information-retention
16 requirement shall apply regardless of any contrary business or institutional policies or
17 procedures. At any time during this information-retention period, upon request by the United
18 States, Chemoil shall provide copies of any documents, records, or other information required to
19 be maintained under this Paragraph.
20
21

22 52. At the conclusion of the information-retention period provided in the preceding
23 Paragraph, Chemoil shall notify the United States at least 90 Days prior to the destruction of any
24 documents, records, or other information subject to the requirements of the preceding Paragraph
25 and, upon request by the United States, Chemoil shall deliver any such documents, records, or
26 other information to EPA. Chemoil may assert that certain documents, records, or other
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1 information is privileged under the attorney-client privilege or any other privilege recognized by
2 federal law. If Chemoil asserts such a privilege, it shall provide the following: (a) the title of the
3 document, record, or information; (b) the date of the document, record, or information; (c) the
4 name and title of each author of the document, record, or information; (d) the name and title of
5 each addressee and recipient; (e) a description of the subject of the document, record, or
6 information; and (f) the privilege asserted by Chemoil. However, no documents, records, or
7 other information created or generated pursuant to the requirements of this or any other Decree
8 with the United States shall be withheld on the grounds that they are privileged. If a claim of
9 privilege applies only to a portion of documents, records, or other information, the documents,
10 records, or other information shall be provided to the United States in redacted form to mask the
11 privileged information only. Chemoil shall retain all documents, records, or other information
12 that it claims to be privileged until the United States has had a reasonable opportunity to dispute
13 the privilege claim before this Court and any such dispute has been resolved in Chemoil's favor.
14 Absent a dispute over a claim of privilege, nothing in this Paragraph shall operate to extend the
15 document retention period set forth in Paragraph 51 above.

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

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

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

4
5 55. This Decree resolves the civil claims of the United States for the violations
6 alleged in the Complaint filed in this action to the Date of Lodging of this Decree.

7 56. The United States reserves all legal and equitable remedies available to enforce
8 the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the
9 rights of the United States to obtain penalties or injunctive relief under the Act or implementing
10 regulations, or under other federal laws, regulations, or permit conditions. The United States
11 further reserves all legal and equitable remedies to address any imminent and substantial
12 endangerment to the public health or welfare or the environment arising at, or posed by, any
13 activity Chemoil engages in, whether related to the violations addressed in this Consent Decree
14 or otherwise.

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16
17 57. In any subsequent administrative or judicial proceeding initiated by the United
18 States for injunctive relief, civil penalties, other appropriate relief relating to Chemoil's
19 violations, Chemoil shall not assert, and may not maintain, any defense or claim based upon the
20 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-
21 splitting, or other defenses based upon any contention that the claims raised by the United States
22 in the subsequent proceeding were or should have been brought in the instant case, except with
23 respect to claims that have been specifically resolved pursuant to Paragraph 55.

24
25 58. This Consent Decree is not a permit, or a modification of any permit, under any
26 federal, state, or local laws or regulations. Chemoil is responsible for achieving and maintaining
27 complete compliance with all applicable federal, state, and local laws, regulations, and permits;
28

1 To the United States Department of Justice by mail:

2
3 EES Case Management Unit
4 Environment and Natural Resources Division
5 U.S. Department of Justice
6 P.O. Box 7611
7 Washington, D.C. 20044-7611
8 Re: DJ# 90-5-2-1-11066

9 To the EPA:

10 Director, Air Enforcement Division
11 Office of Enforcement and Compliance Assurance
12 U.S. Environmental Protection Agency
13 1200 Pennsylvania Avenue, N.W. Mail Code 2422A
14 Washington, D.C. 20460

15 Natalie Firestine
16 Attorney-Advisor
17 Air Enforcement Division
18 Office of Enforcement and Compliance Assurance
19 U.S. Environmental Protection Agency
20 1595 Wynkoop Street (8MSU)
21 Denver, Colorado 80202
22 Telephone: (303) 312-7165
23 Email: firestine.natalie @epa.gov

24 To Chemoil by mail and e-mail:

25 Cheryl Driscoll
26 Corporate Secretary
27 Chemoil Corporation
28 4 Embarcadero Ctr., Suite 3400
San Francisco, California 94111-4106
Telephone: (203) 328-4900

Susan Lafferty
Attorney for Chemoil Corporation
Sutherland, Asbill & Brennan LLC
700 6th Street NW
Washington DC 20001
Telephone: 202-383-0168
E-mail: Susan.Lafferty@sutherland.com

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

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

7
8 **XV. EFFECTIVE DATE**

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

12
13 **XVI. RETENTION OF JURISDICTION**

14 66. The Court shall retain jurisdiction over this case until termination of this Consent
15 Decree, for the purpose of resolving disputes arising under this Decree or entering orders
16 modifying this Decree, pursuant to Sections X (Dispute Resolution) and XVII (Effect of
17 Settlement/Reservation of Rights), or effectuating or enforcing compliance with the terms of this
18 Decree.

19
20 **XVII. MODIFICATION**

21 67. The terms of this Consent Decree, including any attached appendices, may be
22 modified only by a subsequent written agreement signed by all the Parties. Where the
23 modification constitutes a material change to this Decree, it shall be effective only upon approval
24 by the Court.

25
26 68. Any disputes concerning modification of this Decree shall be resolved pursuant to
27 Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided
28

1 by Paragraph 49, the Party seeking the modification bears the burden of demonstrating that it is
2 entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

3
4 **XVIII. TERMINATION**

5 69. After Chemoil has completed the requirements of Section VI (RIN Retirement
6 Requirements), and has paid the civil penalty in full, Section V (Civil Penalty) and any accrued
7 stipulated penalties as required by this Consent Decree, Section VIII (Stipulated Penalties).

8 Chemoil may serve upon the United States a Request for Termination, stating that Chemoil has
9 satisfied those requirements, together with all necessary supporting documentation.

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

15 71. If the United States does not agree that the Decree may be terminated, Chemoil
16 may invoke Dispute Resolution under Section X. However, Chemoil shall not seek Dispute
17 Resolution of any dispute regarding termination until 60 Days after service of its Request for
18 Termination.

19 72. The requirements to replace invalid RINs under Paragraphs 16 – 18 above, and
20 the associated stipulated penalty for the use of invalid RINs under Paragraph 30 above, shall
21 survive regardless of the termination of this Consent Decree pursuant to this Section XVIII.

22
23 **XIX. PUBLIC PARTICIPATION**

24 73. This Consent Decree shall be lodged with the Court for a period of not less than
25 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States
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1 reserves the right to withdraw or withhold its consent if the comments regarding the Consent
2 Decree disclose facts or considerations indicating that the Consent Decree is inappropriate,
3 improper, or inadequate. Chemoil consents to entry of this Consent Decree without further
4 notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to
5 challenge any provision of the Decree, unless the United States has notified Chemoil in writing
6 that it no longer supports entry of the Decree.
7

8 **XX. SIGNATORIES/SERVICE**

9 74. Each undersigned representative of Chemoil and the Assistant Attorney General
10 for the Environment and Natural Resources Division of the Department of Justice certifies that
11 he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to
12 execute and legally bind the Party he or she represents to this document.
13

14 75. This Consent Decree may be signed in counterparts, and its validity shall not be
15 challenged on that basis. Chemoil agrees to accept service of process by mail with respect to all
16 matters arising under or relating to this Consent Decree and to waive the formal service
17 requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any
18 applicable Local Rules of this Court including, but not limited to, service of a summons.
19

20 **XXI. INTEGRATION**

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

77. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Chemoil.

UNITED STATES DISTRICT COURT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

1 Signature Page for *United States of America v. Chemoil Corporation* Consent Decree

2
3 **FOR THE UNITED STATES OF AMERICA:**

4 Respectfully submitted,

5
6 9/25/2016
Date



7 JOHN CRUDEN
8 Assistant Attorney General
9 Environment and Natural Resources Division
10 U.S. Department of Justice

11 

12 JOHN N. MOSCATO
13 Senior Counsel
14 Environmental Enforcement Section
15 Environment and Natural Resources Division

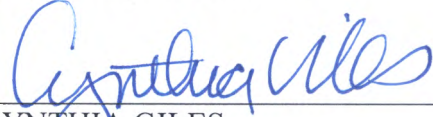
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Signature Page for *United States of America v. Chemoil Corporation* Consent Decree

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Respectfully submitted,

9/21/16



Date

CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

9/19/16



Date

SUSAN SHINKMAN
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

9/16/2016



Date

PHILLIP A. BROOKS
Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 2422A
Washington, D.C. 20406

1 Signature Page for *United States of America v. Chemoil Corporation* Consent Decree

2 **FOR THE UNITED STATES ENVIRONMENTAL**
3 **PROTECTION AGENCY (con't.):**

4 9/13/16

5 

6 Date
7 Attorney Advisor
8 Air Enforcement Division
9 Office of Enforcement and Compliance Assurance
10 U.S. Environmental Protection Agency
11 1595 Wynkoop Street (8MSU)

12 Natalie Firestone

1 Signature Page for *United States of America v. Chemoil Corporation* Consent Decree

2 **FOR CHEMOIL CORPORATION:**

3 Respectfully submitted,

4
5
6 9/8/16

7 

8 Date

9 Cheryl Driscoll
10 Corporate Secretary
11 Chemoil Corporation

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