

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION**

UNITED STATES OF AMERICA,)
)
and)
)
COMMONWEALTH OF PENNSYLVANIA)
DEPARTMENT OF ENVIRONMENTAL)
PROTECTION,)
)
Plaintiffs,)
)
v.)
)
INDSPEC CHEMICAL CORPORATION,)
)
Defendant.)
_____)

Civil Action No. 2:15-cv-01252-JFC

CONSENT DECREE

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A. WHEREAS, Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the Commonwealth of Pennsylvania Department of Environmental Protection (“PADEP”) (collectively, “Plaintiffs”) filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant INDSPEC Chemical Corporation (“INDSPEC”) violated Section 112 of the Clean Air Act (the “Act”), 42 U.S.C. § 7412, the National Emissions Standards for Hazardous Air Pollutants for Equipment Leaks, 40 C.F.R. Part 63, Subpart H, the National Emissions Standards for Hazardous Air Pollutant Emissions – Manufacture of Amino/Phenolic Resins, 40 C.F.R. Part 63, Subpart OOO, the National Emissions Standards for Equipment Leaks – Control Level 2 Standards, 40 C.F.R. Part 63, Subpart UU, and Title 25, Section 129.71 of the Pennsylvania Code, 25 Pa. Code. § 129.71, at INDSPEC’s Resorcinol manufacturing facility located at 133 Main Street, Petrolia, Pennsylvania, 16050 (“Facility”).

B. WHEREAS, INDSPEC is the current owner and operator of the Facility and was the owner and operator of the Facility at the time of the conduct alleged in the Complaint.

C. WHEREAS, INDSPEC manufactures Resorcinol, Resorcinol-based resins, and other Resorcinol derivatives at the Facility, and operates the Facility under a CAA Title V operating permit issued by PADEP, Permit No. 10-00021, effective April 4, 2012. The violations alleged in the Complaint occurred within two process units at the Facility: 1) the Resorcinol Production Process Unit, and 2) the Resorcinol Based Resins Production Unit.

D. WHEREAS, from September 29 through October 1, 2009, EPA conducted a Clean Air Act inspection at the Facility, and issued an Air Compliance Inspection Report to INDSPEC on January 7, 2010, summarizing the results of the September/October 2009 inspection, and identifying Areas of Concern.

E. WHEREAS, on March 28, 2013, EPA issued a Finding of Violation (“FOV”), EPA Docket No. CAA-III-13-002, alleging that INDSPEC failed to comply with certain applicable regulatory requirements for equipment leak detection and repair (“LDAR”) at the Facility.

F. WHEREAS, INDSPEC disputes the allegations in the Complaint and does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the Complaint.

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

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, 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 Clean Air Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to Section 113(b) of the Clean Air 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 Complaint are alleged to have occurred in, and INDSPEC conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, INDSPEC consents to the Court’s jurisdiction over this Decree and any such action and over INDSPEC, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, INDSPEC agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the Plaintiffs, and upon INDSPEC and any successors, assigns, or other entities or persons otherwise bound by law.

4. At least sixty (60) Days prior to a proposed transfer of ownership or operation of the Facility, or any portion of the Facility to which the requirements of Section V apply, INDSPEC shall provide a copy of this Consent Decree to the proposed transferee and shall notify EPA and DOJ in writing, in accordance with Section XIV (Notices), of the proposed transfer and the anticipated date of transfer. No transfer of ownership or operation of the Facility, or any portion of the Facility to which the requirements of Section V apply, whether in compliance with the procedures of this Paragraph or otherwise, relieves INDSPEC of its obligation to ensure that the terms of this Decree are implemented, unless (i) the transferee agrees to undertake the obligations required by Section V of this Consent Decree and to be substituted for INDSPEC as a Party under this Decree and thus bound by the terms hereof, (ii) the United States and PADEP consent to relieve INDSPEC of its obligations through the process set forth in this Paragraph, and (iii) the Court agrees to the substitution and the transferee becomes a Party to this Consent Decree.

a. If INDSPEC intends to request, in connection with the transfer of ownership or operation of the Facility or of any portion of the Facility to which the requirements of Section V apply, that the United States agree to a transferee's assumption of any obligations

and substitution of the transferee for INDSPEC under this Consent Decree, INDSPEC shall condition the transfer upon the transferee's written agreement to execute a modification to this Decree that shall make such obligations applicable to the transferee. In addition, INDSPEC shall provide to EPA and DOJ as soon as possible, but at least sixty (60) Days prior to the anticipated date of transfer: (i) a proposed redline of the Consent Decree showing the specific obligations in the Decree that INDSPEC proposes the transferee assume for the Facility or portion thereof to be transferred; (ii) certification from INDSPEC that the transferee is contractually bound to assume those obligations of this Decree as of the date of transfer; and (iii) certification from the transferee, and supporting documentation, that the transferee has the financial and technical ability to assume those obligations of this Decree, and that the transferee is contractually bound to assume such obligations as of the date of transfer. If requested by INDSPEC, recipients of the notice of proposed transfer and the documents required by this Paragraph 4(a) shall treat the documents as confidential until the date of anticipated transfer or for sixty (60) days from their submittal to EPA and DOJ, whichever is earlier.

b. After the submission to EPA and DOJ of the notice of proposed transfer and the documents required by Paragraph 4(a), either: (i) Plaintiffs, INDSPEC, and the transferee shall file with the Court a joint motion requesting the Court approve a modification substituting the transferee for INDSPEC as the Defendant responsible for complying with all or some of the obligations of the Consent Decree; or (ii) the United States shall notify INDSPEC, after consultation with PADEP, that Plaintiffs do not agree to modify the Consent Decree to make the transferee responsible for complying with the obligations of the Consent Decree, as requested;

c. If INDSPEC does not secure the agreement of Plaintiffs to file a joint motion within sixty (60) Days after submitting the notice of proposed transfer and the documents required by Paragraph 4(a), INDSPEC and the transferee may file, without the agreement of EPA, DOJ or PADEP, a motion requesting the Court to approve a modification substituting the transferee for INDSPEC as the Party responsible for complying with some or all of the obligations of the Consent Decree. The United States may file an opposition to the motion. The motion to modify the Decree shall not be granted unless INDSPEC and the transferee: (i) show that the transferee has the financial and technical ability to assume the obligations of the Decree, as requested; (ii) show that the modification language effectively transfers such obligations to the transferee; or (iii) the Court finds other good cause for granting the motion.

III. DEFINITIONS

5. Terms used in this Consent Decree, including the Appendices listed in Section XXIII, that are defined in the Clean Air Act or in regulations promulgated pursuant to the Clean Air Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Annual” or “Annually” shall mean a calendar year.
- b. “Average” shall mean the arithmetic mean.
- c. “Compliance Date” shall mean the first Day of the first full Quarter immediately following the Effective Date.
- d. “Complaint” shall mean the complaint filed by the Plaintiffs in this action.

- e. “Consent Decree” or “Decree” shall mean this Decree and Appendix A hereto (listed in Section XXIII).
- f. “CAP” shall mean the Corrective Action Plan.
- g. “Covered Equipment” shall mean any equipment that is regulated pursuant to 40 C.F.R. Part 63, Subpart H, 40 C.F.R. Part 63, Subpart UU, or 25 Pa. Code § 129.71.
- h. “Covered Process Units” shall mean the Resorcinol Production Process Unit and the Resorcinol-Based Resins Production Process Unit at the Facility.
- i. “Date of Lodging” shall mean the date that the United States files a “Notice of Lodging” of this Consent Decree with the Clerk of this Court.
- j. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day. For purposes of complying with any related applicable and enforceable LDAR regulation, “day” shall have the meaning provided in such LDAR regulation.
- k. “Effective Date” shall have the definition provided in Section XV of this Consent Decree.
- l. “ELP Implementation Period” shall mean the three (3) years following the Compliance Date of this Consent Decree during which INDSPEC shall implement and comply with the requirements of Appendix A to this Consent Decree.
- m. “Enhanced LDAR Program” or “ELP” shall mean the Enhanced Leak Detection Program required by Section V (Compliance Requirements) and Appendix A to this Consent Decree.

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

o. “Facility” shall mean the facility located at 133 Main Street in Petrolia, Butler County, Pennsylvania, 16050, currently owned and operated by INDSPEC.

p. “Federal LDAR Equipment” shall mean all pumps, connectors, valves and agitators in light liquid or gas/vapor service that are subject to leak detection monitoring requirements of 40 C.F.R. Part 63, Subparts H and UU.

q. “Federal and State LDAR Equipment” shall mean all Federal LDAR Equipment and all State LDAR Equipment.

r. “Finding of Violation” or “FOV” shall mean the March 28, 2013 Finding of Violation described in Paragraph E, above.

s. “LDAR” shall mean leak detection and repair.

t. “LDAR Personnel” shall mean all INDSPEC contractors and employees responsible for performing LDAR monitoring, LDAR data input, maintenance of LDAR monitoring devices, leak reports on equipment subject to LDAR, replacement of equipment subject to LDAR, LDAR recordkeeping, reporting of LDAR activities, any task required by Appendix A to this Decree and/or any other duties generated as a result of this Consent Decree.

u. “Method 21” shall mean the test method found at 40 C.F.R. Part 60, Appendix A, Method 21. To the extent that the Covered Equipment is subject to regulations that modify Method 21, those modifications shall be applicable.

v. “Month” or “Monthly” shall mean calendar month or months.

w. “PADEP” shall mean the Pennsylvania Department of Environmental Protection and any of its successor departments or agencies.

- x. “Paragraph” shall mean a portion of this Decree, including any appendix thereto, identified by an Arabic numeral.
- y. “Parties” shall mean the United States, PADEP, and INDSPEC.
- z. “Party” shall mean either the United States, PADEP, or INDSPEC.
- aa. “PPM” or “ppm” shall mean parts per million.
- bb. “Quarter” or “Quarterly” shall mean a calendar quarter (January through March, April through June, July through September, October through December).
- cc. “Quarterly Review” shall mean the internal LDAR review required pursuant to Section V (Quality Assurance/Quality Control) of Appendix A to this Consent Decree.
- dd. “Screening Value” shall mean the highest emission level that is detected at each piece of equipment as it is monitored using a Photoionization Detector or a Flame Ionization Detector.
- ee. “Section” shall mean a portion of this Decree, including any appendix thereto, identified by a Roman numeral;
- ff. “Semi-Annual Period” shall mean either the first or second six-month period of each calendar year (January 1 through June 30 or July 1 through December 31).
- gg. “State LDAR Equipment” shall mean all pumps and valves in light liquid or gas/vapor service that are subject to leak detection monitoring requirements of 25 Pa. Code § 129.71.
- hh. “Third-Party LDAR Compliance Audit” shall mean any LDAR compliance audit required pursuant to Section VI (Third-Party LDAR Compliance Audits and Corrective Action) of Appendix A to this Consent Decree.

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

jj. “Week” or “Weekly” shall mean the standard seven-day calendar period.

IV. CIVIL PENALTY

6. Within thirty (30) Days after the Effective Date of this Consent Decree, INDSPEC shall pay the sum of \$153,100.00 as a civil penalty. If any portion of the civil penalty due to the United States or PADEP is not paid when due, INDSPEC shall pay interest on the amount past due accruing from the Effective Date through the date of payment at the rate specified in 28 U.S.C. § 1961. The interest payment under this Paragraph shall be in addition to any stipulated penalty due under Section VIII (Stipulated Penalties) of this Consent Decree.

7. INDSPEC shall pay 50% of the civil penalty, and 50% of any interest due pursuant to Paragraph 6, by *FedWire* Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to INDSPEC, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Western District of Pennsylvania. At the time of payment, INDSPEC shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States et al. v. INDSPEC Chemical Corporation*, and shall reference the civil action number and DOJ case number 90-5-2-1-10431, to the United States in accordance with Section XIV of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

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

8. INDSPEC shall pay 50% of the civil penalty, and 50% of any interest due pursuant to Paragraph 6, to PADEP no later than thirty (30) Days after the Effective Date of this Consent Decree. The payment shall be made by a corporate check or the like made payable to “Commonwealth of Pennsylvania - Clean Air Fund” and mailed to the Air Quality Program Manager, Northwest Regional Office, Department of Environmental Protection, 230 Chestnut Street, Meadville, PA 16335.

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

V. COMPLIANCE REQUIREMENTS

10. Enhanced LDAR Program. INDSPEC shall implement and comply with the requirements of Section II through Section V of the Enhanced Leak Detection and Repair Program (“ELP”) set forth in Appendix A to this Consent Decree for a period of three (3) years following the Compliance Date of this Consent Decree (“ELP Implementation Period”). Section VI through Section VII of the ELP shall be implemented for a period of three (3) years following the Compliance Date of this Consent Decree, or until INDSPEC submits its Certification of Compliance pursuant to Section VII of Appendix A, whichever is later. The requirements of the ELP set forth in Appendix A are in addition to, not in lieu of, the requirements of any other LDAR regulation that may be applicable to each piece of Covered Equipment at the Facility.

VI. REVIEW AND APPROVAL OF DELIVERABLES

11. After review of the Corrective Action Plan (“CAP”) required to be submitted for approval pursuant to this Consent Decree, EPA, after consultation with PADEP, shall in writing:

- a. approve the submission;
- b. approve the submission upon specified conditions;

c. approve any part of the submission as is, or upon specified conditions, and approve or disapprove the remainder; or

d. disapprove the submission.

12. If the CAP is approved pursuant to Paragraph 11(a), INDSPEC shall take all actions required by the CAP, in accordance with the schedules and requirements of the CAP, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 11(b) or (c), INDSPEC shall, upon written direction from EPA, take all actions required by the approved portions of the CAP that EPA determines are technically severable from any disapproved portions, subject to INDSPEC's right to dispute only the written specified conditions EPA has identified in accordance with Paragraph 11(b) or (c) or the disapproved portions, under Section X of this Decree (Dispute Resolution).

a. If the CAP is neither approved nor disapproved within sixty (60) Days of submittal, INDSPEC shall provide notification to EPA that it intends to begin implementation, and unless and until EPA notifies INDSPEC of its approval or disapproval pursuant to Paragraph 11, INDSPEC shall take all actions required by the CAP, in accordance with the schedules and requirements stated therein. In such circumstances, except for good cause, EPA may not require INDSPEC to modify any action within the CAP that is complete or is substantially complete at the time of EPA's approval or disapproval.

13. If the CAP is disapproved in whole or in part pursuant to Paragraph 11(c) or (d), INDSPEC shall, within forty-five (45) Days, or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the CAP, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs, subject to INDSPEC's right to dispute the disapproval under Section X of this Decree (Dispute Resolution). If the resubmission is

approved in whole or in part, INDSPEC shall proceed in accordance with the preceding Paragraph.

14. Any stipulated penalties applicable to the original submission, as provided in Section VIII of this Decree, shall accrue during the forty-five (45)-Day period in Paragraph 13, or other specified period pursuant to Paragraph 13, 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 INDSPEC's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

15. If a resubmitted CAP, or portion thereof, is disapproved in whole or in part, EPA may again require INDSPEC to correct any deficiencies, in accordance with the preceding Paragraphs, or EPA may correct the deficiencies and return the submission to INDSPEC, subject to INDSPEC's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided herein.

a. If the resubmission is neither approved nor disapproved within sixty (60) Days of resubmittal, INDSPEC shall provide notification to EPA that it intends to begin implementation, and unless and until EPA notifies INDSPEC of its approval or disapproval pursuant to Paragraph 11, INDSPEC shall take all actions required by the resubmitted CAP, in accordance with the schedules and requirements stated therein. In such circumstances, except for good cause, EPA may not require INDSPEC to modify any action within the resubmitted CAP that is complete or is substantially complete at the time of EPA's approval or disapproval.

16. For any document required to be submitted for review and comment pursuant to this Consent Decree, including Appendix A, EPA, after consultation with PADEP, may choose to provide written comments on the deliverable. If EPA provides written comments that identify deficiencies in such deliverable, and EPA requests a response from INDSPEC, then INDSPEC shall provide a written response to EPA within thirty (30) Days of receipt of such request.

a. Stipulated Penalties Accruing. If INDSPEC fails within thirty (30) Days to substantively address EPA comments for which EPA requests a response from INDSPEC, such failure is subject to Stipulated Penalties as provided in Section VIII of this Consent Decree, subject to INDSPEC's right to invoke Dispute Resolution.

17. Permits and Approvals. Where any compliance obligation under this Section requires INDSPEC to obtain a federal, state, or local permit or approval, INDSPEC shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. INDSPEC may seek relief under the provisions of Section IX of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if INDSPEC has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VII. REPORTING REQUIREMENTS

A. Consent Decree Compliance Reports

18. No later than thirty (30) Days after the end of each Semi-Annual Period, INDSPEC shall submit a Semi-Annual Consent Decree Compliance Report ("Semi-Annual Compliance Report") to EPA and PADEP. No later than thirty (30) Days after the end of each

Quarter, INDSPEC shall submit a Quarterly Consent Decree Compliance Report (“Quarterly Compliance Report”) to EPA and PADEP.

19. Each Semi-Annual Compliance Report shall, at a minimum, include the information in Subparagraphs (a) – (k), below. Every Quarterly Compliance Report shall, at a minimum, include the information in Subparagraphs (f), (g), (h), (j) and (k), below.

- a. A description of each requirement of Section V of this Consent Decree that was completed during the past Semi-Annual Period;
- b. a schedule showing the date on which any requirement of Section V of this Consent Decree was completed during the past Semi-Annual Period;
- c. a list of all tasks required by Section V of this Consent Decree that INDSPEC intends to complete during the next Semi-Annual Period;
- d. a description of all conduct undertaken pursuant to Sections II, IV, VI, VII, VIII, IX, X, XI, and XIV of this Consent Decree during the past Semi-Annual Period;
- e. an identification and description of any non-compliance with any requirement of this Consent Decree during the past Semi-Annual Period;
- f. a description of any problems encountered in complying with the requirements of Section V of this Consent Decree (Compliance Requirements);
- g. a summary of the results of any Quarterly Review or LDAR Compliance Audit required by this Consent Decree that has been concluded during the past Quarter, including, but not limited to, specifically identifying any deficiencies or deviations identified during such audit or Quarterly Review;

h. a description and status of all actions completed, or which will be completed in the future, to remedy any deficiencies identified during any audit or Quarterly Review completed during the past Quarter;

i. the number of personnel directly involved in implementing the LDAR program at the Facility;

j. a description of any training of LDAR Personnel or other LDAR training that was completed during the Quarterly reporting period in accordance with Section III of Appendix A to this Decree; and

k. the status of each corrective action described in any CAP that has not been completed, if such CAP was submitted during or prior to the Quarterly reporting period, pursuant to Paragraph 19(b) of Appendix A to this Decree.

20. Each notice, report, or other submission made pursuant to the requirements of this Consent Decree, including but not limited to the requirements of Appendix A, shall be signed by the Plant Manager or individual responsible for environmental management and compliance at the Facility and shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed document(s), including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(3) of the Clean Air Act and 18 U.S.C. Sections 1001 and 1341.

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

21. Unless otherwise specified, all notices, reports, or other submissions under this Consent Decree shall be submitted to EPA and PADEP in the manner designated in Section XIV of this Consent Decree (Notices).

22. The reporting requirements of this Consent Decree do not relieve INDSPEC of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement. The reporting requirements of this Section are in addition to any other reports, plans, or submissions required by other Sections of this Consent Decree.

23. If INDSPEC violates, or has reason to believe that it may violate, any requirement of this Consent Decree, INDSPEC shall notify the United States, EPA, and PADEP of such violation or potential violation, and its likely duration, in writing, within ten (10) business days of the Day that INDSPEC first becomes aware of such violation or potential violation. The notification shall include an explanation of the likely cause of such violation or potential violation and of the remedial steps taken, or to be taken, to prevent or minimize such violation or potential violation. A description of such violation or potential violation, including a detailed explanation of the cause of the violation or potential violation, shall also be included in the next Quarterly or Semi-Annual Compliance Report, whichever is sooner, that is due for the Quarterly or Semi-Annual Period during which any such written notification was submitted. If the cause of any violation cannot be fully explained at the time the Quarterly or Semi-Annual Compliance Report is due, INDSPEC shall so state in such Report and shall submit an amendment to such Report within thirty (30) Days of the Day that INDSPEC becomes aware of the cause of each such violation. Nothing in this Paragraph 23 or the following Paragraph 24

relieves INDSPEC of its obligation to provide the notice required by Section IX of this Consent Decree (Force Majeure).

24. Whenever any violation of this Consent Decree or any other event affecting INDSPEC's performance under this Decree, or the performance of the Facility, may pose an immediate threat to the public health or welfare or the environment, notwithstanding any other provisions of law requiring notification to EPA or PADEP, INDSPEC shall notify EPA orally or by electronic or facsimile transmission to Zelma Maldonado at maldonado.zelma@epa.gov or by telephone at 215-814-3448 or by facsimile at 215-814-2905, and PADEP in writing at the address set forth in Section XIV (Notices) or by telephone at the PADEP Emergency Response Hotline at 800-373-3398, as soon as possible, but no later than twenty-four (24) hours after INDSPEC first knew of the violation or event. This procedure is in addition to the requirements set forth in any applicable reporting requirement of this Consent Decree or federal, state, or local laws or regulations.

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

VIII. STIPULATED PENALTIES

26. Late Payment of Civil Penalty to the United States. If INDSPEC fails to pay the civil penalty required to be paid to the United States under Section IV of this Decree (Civil Penalty) when due, INDSPEC shall pay a stipulated penalty to the United States of \$3,000 per Day for each Day that the payment is late.

27. Late Payment of Civil Penalty to PADEP. If INDSPEC fails to pay the civil penalty required to be paid to PADEP under Section IV of this Decree (Civil Penalty) when due,

INDSPEC shall pay a stipulated penalty to the PADEP of \$3,000 per Day for each Day that the payment is late.

28. INDSPEC shall be liable for stipulated penalties for violations of this Consent Decree as specified in Paragraphs 29 and 30, below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any submission approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

29. Compliance Milestones. The following stipulated penalties shall accrue for each violation of the following requirements of this Consent Decree:

Violation	Stipulated Penalty	
(a) Failure to revise or timely submit an updated LDAR Manual in accordance with the requirements of Section II (LDAR Manual and LDAR Equipment Inventory Tracking) of Appendix A.	<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
	\$500	1st through 14th Day
	\$750	15th through 30th Day
	\$1,000	31st Day and beyond
(b) Failure to timely and substantively respond to EPA comments on the LDAR Manual required to be submitted for review and comment in accordance with Section II (LDAR Manual and LDAR Equipment Inventory Tracking) of Appendix A.	<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
	\$200	1st through 14th Day
	\$400	15th through 30th Day
	\$600	31st Day and beyond
(c) Failure to update the LDAR Equipment Inventory List in accordance with Section II (LDAR Manual and LDAR Equipment Inventory Tracking) of Appendix A.	<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
	\$200	1st through 14th Day
	\$400	15th through 30th Day
	\$600	31st Day and beyond
(d) Failure to comply with the training requirements set forth in Section III	<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>

(Training) of Appendix A.	\$200 \$400 \$600	1st through 14th Day 15th through 30th Day 31st Day and beyond
(e) Failure to comply with any monitoring methods and equipment requirements set forth in Section IV (Monitoring Methods and Equipment) of Appendix A.	<u>Penalty Per Day</u> \$500 \$750 \$1,000	<u>Period of Noncompliance</u> 1st through 14th Day 15th through 30th Day 31st Day and beyond
(f) Failure to complete any Daily Certification required pursuant to Section V (Quality Assurance/Quality Control) of Appendix A.	<u>Penalty Per Day</u> \$100 \$300 \$500	<u>Period of Noncompliance</u> 1st through 14th Day 15th through 30th Day 31st Day and beyond
(g) Failure to timely conduct a Quarterly Review in accordance with Section V (Quality Assurance/Quality Control) of Appendix A.	<u>Penalty Per Day</u> \$500 \$750 \$1,000	<u>Period of Noncompliance</u> 1st through 14th Day 15th through 30th Day 31st Day and beyond
(h) Failure to conduct a Quarterly Review that meets each requirement of Section V (Quality Assurance/Quality Control) of Appendix A.	\$1000 per requirement not addressed	
(i) Failure to timely correct any deficiencies detected or observed as part of a Quarterly Review as required by Section V (Quality Assurance/Quality Control) of Appendix A.	<u>Penalty Per Day</u> \$300 \$550 \$800	<u>Period of Noncompliance</u> 1st through 14th Day 15th through 30th Day 31st Day and beyond
(j) Failure to completely correct each deficiency detected or observed as part of a Quarterly Review in accordance with all requirements of Section V (Quality Assurance/Quality Control) of Appendix A.	\$300 per deficiency not corrected	
(k) Failure to comply with the requirements of Section VI (LDAR Compliance Audits and Corrective Action) of Appendix A.	<u>Penalty Per Day</u> \$500 \$750 \$1,000	<u>Period of Noncompliance</u> 1st through 14th Day 15th through 30th Day 31st Day and beyond

(l) Failure to conduct any task or comply with any schedule set forth in any CAP submitted pursuant to Section VI (LDAR Compliance Audits and Corrective Action) of Appendix A and approved by EPA pursuant to Section VI (Review and Approval of Deliverables) of this Consent Decree.	<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
	\$300	1st through 14th Day
	\$550	15th through 30th Day
	\$800	31st Day and beyond
(m) Failure to provide timely notification to EPA of any violation of this Consent Decree.	<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
	\$300	1st through 14th Day
	\$550	15th through 30th Day
	\$800	31st Day and beyond
(n) Failure to timely submit any Quarterly or Semi-Annual Consent Decree Compliance Reports in accordance with Section VII (Reporting Requirements) of this Consent Decree.	<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
	\$300	1st through 14th Day
	\$550	15th through 30th Day
	\$800	31st Day and beyond
(o) Failure to submit Quarterly or Semi-Annual Consent Decree Compliance Reports, in accordance with Section VII (Reporting Requirements) of this Consent Decree, that accurately addresses each requirement under Paragraph 19.	\$500 per requirement not addressed	

30. Other Requirements. For any reporting or notification requirement of this Consent Decree not identified and not subject to a stipulated penalty pursuant to Paragraph 29, above, the following stipulated penalties shall accrue per violation per Day for each violation of each such reporting requirement:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$300	1st through 14th Day

\$550	15th through 30th Day
\$800	31st Day and beyond

31. Stipulated penalties under this Section VIII shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

32. INDSPEC shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand, or a written demand from the United States in which PADEP joins, unless INDSPEC submits a written Notice of Dispute in accordance with Section X (Dispute Resolution) of this Consent Decree.

33. Either Plaintiff may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

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

a. If the dispute is resolved by agreement pursuant to Paragraph 44 of this Consent Decree, that is not appealed to the Court, INDSPEC shall pay accrued penalties as set forth in the agreement within thirty (30) Days of the effective date of the agreement.

b. If the dispute is resolved by a decision of the United States, as set forth in a Statement of Position pursuant to Paragraph 46 of this Consent Decree, that is not appealed to the Court, INDSPEC shall pay accrued penalties determined to be owing in the United States' Statement of Position within thirty (30) Days of the receipt of the United States' Statement of Position.

c. If the dispute is appealed to the Court and the United States prevails in whole or in part, INDSPEC shall pay all accrued penalties determined by the Court to be owing, together with accrued interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in Paragraph 34(d), below.

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

35. INDSPEC shall pay stipulated penalties due pursuant to a demand by the United States in the manner set forth in and with the confirmation notices required by Paragraph 7, 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. INDSPEC shall pay stipulated penalties due pursuant to a joint demand of the United States and PADEP one-half to the United States and one-half to PADEP in the manner set forth in and with the confirmation notices required by Paragraphs 7 and 8 of this Consent Decree.

36. If INDSPEC fails to pay stipulated penalties according to the terms of this Consent Decree, INDSPEC 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 and/or PADEP from seeking any remedy otherwise provided by law for INDSPEC's failure to pay any stipulated penalties.

37. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and/or PADEP for INDSPEC's violation of this Consent Decree or applicable law. Where a

violation of this Consent Decree is also a violation of 40 C.F.R. Subpart H, Sections 63.162(c) or (e), 63.180(b)-(d), 63.181(b)(1), (5), (7) or 63.181(i) and (j), or 40 C.F.R. Part 63, Subpart UU, Sections 63.1022, 63.1023(b)-(c), or 63.1038(b)(1), INDSPEC shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

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

39. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, INDSPEC shall provide:

- a. Notice, orally or by electronic or facsimile transmission, to EPA and PADEP within seventy-two (72) hours of when INDSPEC first knew that the event might cause a delay.
- b. An explanation and description in writing to EPA and PADEP within fourteen (14) Days of when INDSPEC first knew that the event might cause a delay. Such written notice shall include the following: 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; INDSPEC'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 INDSPEC, such event may cause or contribute to an endangerment to public health, welfare or the environment. INDSPEC shall include with any such written notice all available documentation supporting the claim that the delay was attributable to a force majeure event. The written notice required by this Paragraph 39 shall be effective upon its mailing by overnight mail or by First Class U.S. Postal Service mail to EPA and PADEP in the manner set forth in Section XIV (Notices). Failure to comply with the above requirements shall preclude INDSPEC 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. INDSPEC shall be deemed to know of any circumstance of which INDSPEC, any entity controlled by INDSPEC, or INDSPEC's contractors knew or should have known.

40. If EPA, after a reasonable opportunity for review and comment by PADEP, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by PADEP, 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, in consultation with PADEP, will notify INDSPEC in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event, and will provide a copy of such notice to PADEP.

41. If EPA, after a reasonable opportunity for review and comment by PADEP, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify INDSPEC in writing of its decision, and will provide a copy of such notice to PADEP.

42. If INDSPEC elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than thirty (30) Days after receipt of EPA's notice provided to INDSPEC pursuant to Paragraph 40 or 41. In any such proceeding, INDSPEC 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 INDSPEC complied with the requirements of Paragraphs 40 and 41, above. If INDSPEC carries this burden, the delay at issue shall be deemed not to be a violation by INDSPEC of the affected obligation of this Consent Decree.

X. DISPUTE RESOLUTION

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

44. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when one party sends a written Notice of Dispute to the other Parties. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed sixty (60) Days from the date the dispute arises, unless that period is

modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with PADEP, shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, INDSPEC invokes formal dispute resolution procedures as set forth below.

45. Formal Dispute Resolution. INDSPEC shall invoke formal dispute resolution procedures, within the time period provided in Paragraph 44, by serving on the United States, with a copy to PADEP, 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 INDSPEC's position and any supporting documentation relied upon by INDSPEC.

46. After consultation with PADEP, the United States shall serve upon INDSPEC its Statement of Position within forty-five (45) Days of receipt of INDSPEC's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on INDSPEC, unless INDSPEC files a motion for judicial review of the dispute in accordance with Paragraph 47.

47. INDSPEC may seek judicial review of the dispute by filing with the Court and serving on the United States, with a copy to PADEP, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within forty-five (45) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of INDSPEC's position on the matter in dispute, including any supporting factual data, analysis,

opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

49. In a formal dispute resolution proceeding under this Section, INDSPEC shall bear the burden of demonstrating that its position complies with this Consent Decree and the Clean Air Act, and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and INDSPEC reserves the right to argue to the contrary.

50. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of INDSPEC under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 34. If INDSPEC does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

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

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

- b. verify any data or information submitted to the United States or PADEP in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by INDSPEC or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess INDSPEC's compliance with this Consent Decree.

52. Until five (5) years after the termination of this Consent Decree, INDSPEC shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information regardless of storage medium (*e.g.*, paper or electronic) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate to and demonstrate INDSPEC's performance of its obligations under this Consent Decree. Upon request by EPA or PADEP, INDSPEC shall provide, in electronic format if so requested, any or all LDAR monitoring data generated during the life of this Consent Decree, regardless of whether such data was generated for purposes of compliance with the terms of this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures.

53. At any time during this information-retention period, upon request by the United States or PADEP as set forth in Paragraph 55, INDSPEC shall provide copies of any documents, records, or other information required to be maintained under this Section.

54. At the conclusion of the information-retention period provided in Paragraph 52, INDSPEC shall notify Plaintiffs at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of Paragraph 52.

55. Upon any request by the United States or PADEP, INDSPEC shall deliver any documents, records, or other information subject to the requirements of Paragraph 52 to EPA or PADEP. INDSPEC 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 INDSPEC asserts such a privilege, unless otherwise agreed to in writing by the Parties, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by INDSPEC. However, no documents, records, or other information required to be created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

56. Except for emissions data, including any LDAR monitoring and calibration data, and data relating to any LDAR monitoring equipment or information relating to any database used to store LDAR monitoring data, INDSPEC may 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 35 P.S. § 4013.2. As to any information that INDSPEC seeks to protect as CBI, INDSPEC shall follow the procedures set forth in 40 C.F.R. Part 2.

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

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

58. This Consent Decree resolves the civil claims of the United States and PADEP for the violations alleged in the Complaint filed in this action through the Date of Lodging of this Consent Decree.

59. The United States and PADEP reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 58. This Consent Decree shall not be construed to limit the rights of the United States or PADEP to obtain penalties or injunctive relief under the Clean Air Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 58. The United States and PADEP 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, INDSPEC's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

60. In any subsequent administrative or judicial proceeding initiated by the United States or PADEP for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, INDSPEC 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 PADEP 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 58 of this Section.

61. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. INDSPEC is responsible for achieving and

maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and INDSPEC's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and PADEP do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that INDSPEC's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, or with any other provisions of federal, state, or local laws, regulations, or permits.

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

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

XIII. COSTS

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

XIV. NOTICES

65. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed to the persons listed below. For any person listed below, if an email address is

provided, electronic submissions may be submitted to such person as an alternative to a paper submission.

Notice or Submission to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-10431

Notice or Submission to United States Attorney for the Western District of Pennsylvania:

Paul Skirtich
Assistant United States Attorney
Western District of Pennsylvania
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
Telephone: (412) 894-7418
Fax: (412) 644-4549
paul.skirtich@usdoj.gov

Notice or Submission to EPA:

Office of Air Enforcement & Compliance (3AP20)
Air Protection Division
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

And to

Leslie Jones Doherty (3AP30)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103
Telephone: 215-814-3409
Facsimile: 215-814-2905
Jones.Leslie@epa.gov

And to

Kathleen J. Root, Esq. (3RC10)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103
Telephone: 215-814-2684
Root.Kathleen@epa.gov

Notice or Submission to PADEP:

Lori McNabb
Air Quality Operations Manager
Northwest Regional Office
Department of Environmental Protection
230 Chestnut Street
Meadville, PA 16335

And to

Office of Chief Counsel
Northwest Regional Office
Department of Environmental Protection
230 Chestnut Street
Meadville, PA 16335

Notice or Submission to INDSPEC:

Scott Halbrooks
INDSPEC Chemical Corporation
133 Main Street
Petrolia, PA 16050
Attn: Plant Manager

And to

Occidental Chemical Corporation
5005 LBJ Freeway, Suite 2200
Dallas, TX 75244
Attn: General Counsel

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

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

XV. EFFECTIVE DATE

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

XVI. RETENTION OF JURISDICTION

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

XVII. MODIFICATION

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

71. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 49, 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).

XVIII. TERMINATION

72. INDSPEC may serve upon the United States, with a copy to PADEP, a Request for Termination only after the following requirements have been met:

- a. INDSPEC has completed the requirements of Section V (Compliance Requirements) of this Decree, including all corrective action(s) required under any CAP;
 - b. INDSPEC has submitted its Certification of Compliance pursuant to Section VII of Appendix A;
 - c. INDSPEC is in compliance with all other requirements of this Consent Decree;
- and
- d. INDSPEC has paid the civil penalty and any accrued stipulated penalties required by this Consent Decree.

73. INDSPEC's Request for Termination shall state that INDSPEC has satisfied the requirements in Paragraph 72(a)-(d), above, and shall include all necessary supporting documentation.

74. Following payment of the civil penalty as set forth in Section IV, INDSPEC shall be deemed to have satisfied all of the requirements of this Consent Decree applicable to the Facility on and after the later of: (i) the date of the permanent shutdown of the Facility; or (ii) the date of the surrender of all permits. INDSPEC shall notify EPA and PADEP of a permanent shutdown of the Facility at least seven (7) Days prior to any such permanent shutdown. If, rather than shutdown of the entire Facility, INDSPEC intends to permanently shut down any portion of

the Facility to which the requirements of Section V apply, it shall request modification of this Consent Decree pursuant to Section XVII (Modification).

75. If the Facility is permanently shut down and all permits are surrendered, then, no later than thirty (30) Days following such permanent shutdown or surrendering of all permits, whichever is later, INDSPEC shall serve upon the United States, with a copy to PADEP, a Request for Termination. Such Request for Termination shall state that the Facility has been permanently shut down and that all permits have been surrendered, and shall include all necessary supporting documentation.

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

77. If, subsequent to receipt of INDSPEC's Request for Termination, the United States, after consultation with PADEP, does not agree that the Decree may be terminated, INDSPEC may invoke Dispute Resolution under Section X of this Decree. However, INDSPEC shall not seek Dispute Resolution of any dispute regarding termination until at least one hundred twenty (120) Days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

78. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the

Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. INDSPEC consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified INDSPEC in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

79. Each undersigned representative of INDSPEC, PADEP, and the Deputy Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

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

XXI. INTEGRATION

81. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents.

XXII. FINAL JUDGMENT

82. 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, PADEP, and INDSPEC.

XXIII. APPENDICES

83. The following Appendices are attached to and incorporated by reference as part of this Consent Decree:

“Appendix A” is the “Enhanced Leak Detection and Repair Program.”


Dated and entered this ____ day of _____, 2015.

UNITED STATES DISTRICT JUDGE
Western District of Pennsylvania
Pittsburgh Division

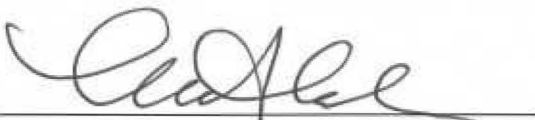
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States et al. v. INDSPEC Chemical Corporation*.

FOR PLAINTIFF UNITED STATES OF AMERICA:

9/11/15
DATE


NATHANIEL DOUGLAS
Deputy Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

9/14/2015
DATE


MAYA S. ABELA
Trial Attorney
MARCELLO M. MOLLO
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
202-514-2717
maya.abela@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States et al. v. INDSPEC Chemical Corporation*.

FOR PLAINTIFF UNITED STATES OF AMERICA:

DAVID J. HICKTON
UNITED STATES ATTORNEY
WESTERN DISTRICT OF PENNSYLVANIA

9-23-15
DATE

s/Paul E. Skirtich
PAUL SKIRTICH
Assistant United States Attorney
Western District of Pennsylvania
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
Telephone: (412) 894-7418
Fax: (412) 644-4549
paul.skirtich@usdoj.gov
PA ID No. 30440

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States et al. v. INDSPEC Chemical Corporation*.

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

9/17/15
DATE



SHAWN M. GARVIN
Regional Administrator
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RA00)
Philadelphia, PA 19103-2029

9/16/15
DATE



MARY B. COE
Acting Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

9/11/15
DATE



KATHLEEN ROOT
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103
215-814-2684
root.kathleen@epa.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States et al. v. INDSPEC Chemical Corporation*.

FOR PLAINTIFF THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

9/15/15

DATE

Handwritten signature of Edward F. Orris in blue ink, followed by the letters "PE".

EDWARD F. ORRIS, P.E.
Air Quality Program Manager
Pennsylvania Department of Environmental Protection
Northwest Regional Office
230 Chestnut Street
Meadville, PA 16335

9.15.15

DATE


Handwritten signature of Douglas G. Moorhead in blue ink.

DOUGLAS G. MOORHEAD
Supervisory Counsel
Pennsylvania Department of Environmental Protection
Northwest Regional Office
230 Chestnut Street
Meadville, PA 16335
814-332-6070


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States et al. v. INDSPEC Chemical Corporation*.

FOR DEFENDANT INDSPEC CHEMICAL CORPORATION:

9/4/15
DATE


GRANT EVANS
President
INDSPEC Chemical Corporation

9.2.15
DATE


SCOTT A. KING
Vice President and General Counsel
Occidental Chemical Corporation
5005 LBJ Freeway, Suite 2200
Dallas, Texas 75244
972-404-3840

Agent authorized to accept service on behalf of above-signed party:

The Corporation Trust Company
1209 Orange Street,
Wilmington, DE 19801
302-658-7581

APPENDIX A

United States of America and Commonwealth of Pennsylvania Department of Environmental Protection v. INDSPEC Chemical Corporation

ENHANCED LEAK DETECTION AND REPAIR PROGRAM (“ELP”)

I. General Requirements

1. Applicability. All requirements of this Appendix A shall apply to all Federal LDAR Equipment at the Facility. The requirements of Sections I-III of this Appendix A shall apply to all Covered Equipment at the Facility. The requirements of Sections IV and VII of this Appendix A shall apply to all Federal LDAR Equipment and State LDAR Equipment at the Facility.

2. The requirements of this Appendix A are in addition to, and not in lieu of, the requirements of any federal or state LDAR regulations that may be applicable to a piece of Covered Equipment. If there is a conflict between a federal or state LDAR regulation and the requirements set forth in this Appendix A, INDSPEC shall follow whichever is more stringent. With the exception of the LDAR Equipment Inventory and associated Tracking Program requirements set forth in Paragraphs 3(a) and 5, the requirements of this Appendix A shall not apply to LDAR components which are exempt from the leak detection monitoring requirements set forth in 40 C.F.R. Part 63, Subpart H, 40 C.F.R. Part 63, Subpart UU, or 25 Pa. Code § 129.71.

II. LDAR Manual and LDAR Equipment Inventory Tracking

3. No later than ninety (90) Days after the Compliance Date, INDSPEC shall revise and update the information currently contained in its Leak Detection and Repair Program

Manual, dated August 2009 (“LDAR Manual”), to describe its facility-wide LDAR program, and add the following information to the LDAR Manual:

a. an LDAR Equipment Inventory Tracking Program that ensures that pieces of Covered Equipment added to the Facility for any reason are integrated into the LDAR program, and that pieces of Covered Equipment that are taken out of service are removed from the LDAR program;

b. the roles and responsibilities of personnel, including contractor personnel, directly involved in implementing the LDAR program at the Facility;

c. the LDAR personnel training protocol required pursuant to Paragraph 6 of this Appendix A;

d. how the number of personnel dedicated to LDAR functions at the Facility is sufficient to comply with the leak detection requirements set forth in 40 C.F.R. Part 63, Subpart H, 40 C.F.R. Part 63, Subpart UU, and 25 Pa. Code § 129.71.

4. By no later than ninety (90) Days after the Compliance Date, INDSPEC shall submit the revised LDAR Manual to EPA, with a copy to PADEP, for review and comment by EPA, in accordance with the requirements of Paragraph 16 of the Consent Decree. INDSPEC shall review its LDAR Manual on an Annual basis, and update it as necessary to ensure accuracy.

5. Commencing no later than ninety (90) Days after the Compliance Date of this Consent Decree, INDSPEC shall ensure that each piece of equipment added to the Facility or removed from the Facility for any reason is evaluated to determine if it is or was Covered Equipment. If INDSPEC determines that any equipment removed from or added to the Facility was or is Covered Equipment, INDSPEC shall update its LDAR Equipment Inventory tracking

list in its LDAR Manual within ninety (90) Days of such determination to reflect the change, in accordance with the requirements of Paragraph 3(a) of this Appendix A.

III. Training

6. By no later than ninety (90) Days after the Compliance Date of this Consent Decree, INDSPEC shall develop an LDAR training protocol to ensure that refresher training is performed once per calendar year for personnel that have already received LDAR training, and to ensure that new personnel are trained prior to any involvement in the LDAR program at the Facility. The LDAR training protocol developed pursuant to this Paragraph shall be included in INDSPEC's LDAR Manual, in accordance with the requirements of Paragraph 3(c) of this Appendix A.

7. No later than one hundred eighty (180) Days after the Compliance Date of this Consent Decree, INDSPEC shall ensure that all employees and contractors responsible for LDAR monitoring, maintenance of LDAR equipment, LDAR repairs, ELP and/or other duties generated by the LDAR program and ELP at the Facility have completed training on all aspects of LDAR and ELP that are relevant to the person's duties.

IV. Monitoring Methods and Equipment

By no later than the Compliance Date, INDSPEC shall comply with Paragraphs 8-12 of Appendix A, below.

8. Methods. For all Federal and State LDAR Equipment, INDSPEC shall comply with all applicable requirements under 40 C.F.R. Part 63 Subpart H, 40 C.F.R. Part 63 Subpart UU, and 25 Pa. Code § 129.71, including, as applicable, the requirements set forth at 40 C.F.R. Part 60, EPA Reference Test Method 21, in performing LDAR monitoring. INDSPEC shall transfer all LDAR monitoring data to an electronic database on at least a daily basis for

recordkeeping purposes. INDSPEC may use paper calibration logs where necessary and more feasible (e.g., small rounds, remonitoring, or when dataloggers are not available or broken), and shall record the identification of the technician undertaking the monitoring or calibration, the date, time, screening value, and the identification of the monitoring equipment. INDSPEC shall transfer any manually recorded monitoring data to the electronic database within seven (7) Days of monitoring.

9. Equipment. Except as provided in Paragraph 8, INDSPEC shall conduct all LDAR monitoring of Federal and State LDAR Equipment using equipment that is capable of and equipped for electronic data-logging and that records, at a minimum: the Screening Value detected at each piece of equipment, the date and time that each Screening Value is taken, the identification number of the monitoring instrument, the LDAR monitoring technician, and each piece of equipment monitored.

a. INDSPEC shall use a Flame Ionization Detector (“FID”) for regulatory periodic LDAR monitoring of all Federal or State LDAR Equipment that comes into contact with benzene, Solox, styrene or ether, except as provided in Paragraph 9(c).

b. INDSPEC shall use a Photoionization Detector (“PID”) with an 11.8 eV lamp for regulatory periodic LDAR monitoring of all Federal or State LDAR Equipment that comes into contact with formaldehyde, except as provided in Paragraph 9(c).

c. INDSPEC shall use either an FID or a PID with a 10.6 eV, 11.7 eV, or 11.8 eV lamp for leak repair verification LDAR monitoring of all Federal and State LDAR Equipment that comes into contact with benzene, styrene, or ether. INDSPEC shall use either an FID or a PID with an 11.7 eV or 11.8 eV lamp for leak repair verification LDAR monitoring of all Federal and State LDAR Equipment that comes into contact Solox. INDSPEC shall use a

PID with an 11.7 eV or 11.8 eV lamp for leak repair verification LDAR monitoring of all Federal and State LDAR Equipment that comes into contact with formaldehyde.

10. Calibration. INDSPEC shall conduct all calibrations of LDAR monitoring equipment in accordance with the applicable requirements of 40 C.F.R. Part 63, Subpart H, 40 C.F.R. Part 63 Subpart UU, and 25 Pa. Code § 129.71, including, as applicable, the requirements set forth at 40 C.F.R. Part 60, EPA Reference Test Method 21. All LDAR monitoring equipment shall be calibrated at the beginning of each daily monitoring shift, and shall be re-calibrated as required pursuant to Paragraph 11 of this Appendix A for the purpose of conducting calibration drift assessments.

11. Calibration Drift Assessment.

a. INDSPEC shall re-calibrate the LDAR monitoring equipment and conduct a calibration drift assessment of the LDAR monitoring equipment, in accordance with the procedures set forth in Paragraph 11(b)-(d) of this Appendix A, at the following times:

- i. following any shut-down of the LDAR monitoring equipment if, for any reason, during a monitoring shift, the equipment was turned off, except in the event of a “flame-out” of the monitoring equipment when the equipment can be immediately reignited; and
- ii. the end of each daily monitoring shift.

b. A calibration drift assessment shall be calculated by comparing the two previous calibrations of the LDAR monitoring instrument (e.g., the calibration conducted at the beginning of the monitoring shift would be compared against the calibration conducted following the shut-down of the monitoring equipment during the monitoring shift). If any calibration drift assessment calculated shows a negative drift of more than ten percent (10%) from the previous calibration, INDSPEC shall re-monitor all components monitored after the prior compliant

calibration that had a reading of greater than 90% of the applicable leak threshold. Any re-monitoring of components required pursuant to this Paragraph shall be conducted within the next monitoring shift following the initial monitoring, or no later than five (5) Days after the negative calibration drift reading, whichever is sooner.

c. Each calibration drift assessment shall be conducted using the same calibration gas concentration used for each daily monitoring shift as required in Paragraph 10.

d. Except as provided in Paragraph 8, INDSPEC shall electronically record the calibration drift assessment and all calibration readings prior to monitoring.

12. Calibration Records. Except as provided in Paragraph 8, INDSPEC shall maintain electronic calibration records. The electronic calibration records or calibration log shall demonstrate compliance with the requirements related to calibration precision, response factors, and performance evaluations for the monitoring instrument in accordance with the applicable monitoring equipment calibration requirements of 40 C.F.R. Part 63, Subpart H, 40 C.F.R. Part 63, Subpart UU, and 25 Pa. Code § 129.71, including, as applicable, the requirements set forth at 40 C.F.R. Part 60, EPA Reference Test Method 21. The electronic calibration records or calibration log shall also include calibration readings for each monitoring shift and calibration drift assessments required pursuant to Paragraph 11 of this Appendix A. INDSPEC shall retain all calibration records required pursuant to this Paragraph in accordance with the document retention requirements of Section XI (Information Collection and Retention) of the Consent Decree.

V. Quality Assurance/Quality Control (“QA/QC”)

13. Daily Certification by LDAR Monitoring Technicians: Commencing no later than ninety (90) Days after the Compliance Date of this Consent Decree, INDSPEC shall ensure

that each LDAR monitoring technician certifies, at the end of each Day, that any Federal LDAR Equipment is monitored and that the monitoring data collected for the Federal LDAR Equipment represents the LDAR monitoring performed for that Day, by requiring the LDAR monitoring technician to sign a form, either manually or electronically, that includes the following certification:

On [insert date], I reviewed the LDAR monitoring data that I collected today and to the best of my knowledge and belief, the data accurately represents the LDAR monitoring I performed today.

14. Quarterly Review. Commencing upon completion of the first full Quarter after the Compliance Date, INDSPEC shall, at unannounced times, have an LDAR-trained employee of INDSPEC or third-party contractor who does not serve as an LDAR monitoring technician on a routine basis, undertake the following no less than once per Quarter:

- a. verify that each listing of Federal LDAR Equipment in the LDAR Equipment Inventory for the prior quarter is complete, accurate, and reflects the removal or addition of any Federal LDAR Equipment at the Facility in accordance with the LDAR Equipment Inventory Tracking Program in the LDAR Manual;
- b. verify that required monitoring of Federal LDAR Equipment was performed at the appropriate frequency;
- c. verify that all relevant documentation has been maintained and sign-offs have been recorded for any Federal LDAR Equipment placed on a delay of repair (“DOR”) list, and that all repaired Federal LDAR Equipment that was previously listed on a DOR list has been removed from such list;

d. verify that any required repair of Federal LDAR Equipment has been performed within the required time period, or that such leaking component has either been placed on a DOR list or removed from LDAR service;

e. review Federal LDAR Equipment monitoring data and number of pieces of Federal LDAR Equipment monitored per Day for feasibility and trends, as defined in the LDAR Manual;

f. verify that records demonstrating compliance with applicable requirements (40 C.F.R. Part 63, Subpart H, 40 C.F.R. Part 63, Subpart UU, or 40 C.F.R. Part 60, EPA Reference Test Method 21) for monitoring instrument calibration, response factors, and performance evaluations have been maintained as required pursuant to Section IV of this Appendix A;

g. verify that monitoring data were recorded and electronically transcribed pursuant to Section IV of this Appendix A, and LDAR Daily Certifications required by Paragraph 14 of this Appendix A were completed and maintained; and

h. observe in the field each LDAR monitoring technician conducting LDAR monitoring during the period of time that such Quarterly Review is being undertaken to ensure monitoring is being conducted pursuant to the applicable requirements in 40 C.F.R. Part 63, Subpart H, 40 C.F.R. Part 63, Subpart UU, and 40 C.F.R. Part 60, EPA Reference Test Method 21.

15. INDSPEC shall correct any deficiencies detected or observed in the Quarterly Review as soon as practicable, but by no later than sixty (60) Days after completion of such Quarterly Review. INDSPEC shall maintain a log that: (i) records the date and time that the

reviews, verifications and observations required by Paragraph 14 were undertaken; and (ii) describes the nature and timing of any corrective action taken to address deficiencies.

VI. LDAR Compliance Audits and Corrective Action

16. INDSPEC shall perform two (2) LDAR Compliance Audits of the Covered Process Units at the Facility, in accordance with the requirements of this Appendix A. The first LDAR Compliance Audit shall be conducted by a Third-Party Auditor or an LDAR trained employee of INDSPEC or its corporate affiliates, who does not serve as an LDAR monitoring technician on a routine basis, and the second LDAR Compliance Audit shall be conducted by a Third-Party Auditor. Any Third-Party Auditor retained for purposes of complying with the requirements of this Appendix A shall: a) have received LDAR training or be a provider of LDAR training; b) have experience in conducting LDAR audits; c) not have previously performed routine LDAR monitoring at the Facility; and, d) not be otherwise affiliated with, an employee of, or an LDAR contractor for INDSPEC. The first LDAR Compliance Audit shall be initiated after the completion of the fourth (4th) Quarter following the Compliance Date and prior to the conclusion of the fifth (5th) Quarter following the Compliance Date of this Consent Decree. The second LDAR Compliance Audit shall be performed at any time following the eighth (8th) Quarter following the Compliance Date, and shall be completed no later than the last day of the twelfth (12th) Quarter following the Compliance Date.

17. Each LDAR Compliance Audit shall include, but not be limited to:

a. reviewing compliance with the LDAR Manual and all applicable leak detection monitoring requirements set forth in 40 C.F.R. Part 63, Subpart H, and 40 C.F.R. Part 63, Subpart UU for the previous four (4) Quarters;

b. completing each task identified in Paragraph 14(a) – (h) of this Appendix A for the previous four (4) Quarters; and

c. performing the following activities:

i. Calculating a Comparative Monitoring Audit Leak Percentage.

Federal LDAR Equipment shall be monitored to calculate a leak percentage for each Covered Process unit broken down by equipment type (i.e., valves, agitators, and connectors). The monitoring that takes place during each LDAR Compliance Audit shall be called “Comparative Monitoring” and the leak percentages derived from the Comparative Monitoring shall be called the “Comparative Monitoring Audit Leak Percentage.”

ii. Calculating the Historic Average Leak Percentage from Prior

Periodic Monitoring Events. For each Covered Process Unit that is audited, the historic average leak percentage from prior monitoring events, broken down by equipment type (i.e., valves, agitators, and connectors) shall be calculated. The following number of complete monitoring periods immediately preceding each LDAR Compliance Audit shall be used for this purpose:

1. valves – four (4) monitoring periods;
2. agitators – twelve (12) monitoring periods; and
3. connectors – one (1) monitoring period.

iii. Calculating the Comparative Monitoring Leak Ratio. For each

Covered Process Unit and each type of Federal LDAR Equipment (i.e., valves, agitators, and connectors) that is audited, the ratio of each Comparative Monitoring Audit Leak Percentage from Paragraph 17(c)(i), above, to the Historic Average Leak Percentage from Paragraph 17(c)(ii), above, shall be calculated. This ratio shall be called the “Comparative Monitoring Leak Ratio.” If a calculated ratio yields an infinite result, INDSPEC shall assume that one

leaking piece of equipment was found in the process unit through historic monitoring during the twelve (12)-month period immediately preceding each Third-Party LDAR Compliance Audit, and the ratio shall be recalculated.

18. Each LDAR Compliance Audit may take the place of the Quarterly Review required pursuant to Paragraph 14 of this Appendix A, for the Quarter during which such LDAR Compliance Audit was conducted.

19. Corrective Action Plan (“CAP”).

a. No later than ninety (90) Days after the issuance of each final report for the LDAR Compliance Audit, INDSPEC shall complete each corrective action necessary to address any noncompliance identified during the most recent LDAR Compliance Audit and address any equipment leaks that are resulting in a Comparative Monitoring Leak Ratio that is 3.0 or higher as calculated pursuant to Paragraph 17(c)(iii) above, and Comparative Monitoring Audit Leak Percentage as calculated pursuant to Paragraph 17(c)(i) above, is greater than or equal to one (1) percent, as calculated pursuant to Paragraph 17(c)(iii), above.

b. Requirements of the CAP. If any corrective action identified by or as a result of either LDAR Compliance Audit and/or any systematic cause(s) of an exceedance of the trigger specified in Paragraph 19(a) is not completed, or is not expected to be completed, within ninety (90) Days after the completion of the most recent LDAR Compliance Audit, INDSPEC shall submit a CAP. Any such CAP shall explain the reasons why each such corrective action was not completed within ninety (90) Days after the completion of the most recent LDAR Compliance Audit and shall include a proposed schedule for completion of all such corrective action(s), and such schedule shall provide for completion of each corrective action as expeditiously as practical. Each corrective action identified by, or as a result of, the second

LDAR Compliance Audit shall be completed prior to the submission of the Certification of Compliance required pursuant to Section VII (Certification of Compliance) of this Appendix A.

c. Timing of the CAP. If INDSPEC is required to submit a CAP pursuant to Paragraph 19(b) of this Appendix A, then by no later than ninety (90) Days after the completion of the most recent LDAR Compliance Audit, INDSPEC shall submit the CAP to EPA for review and approval, with a copy to PADEP.

d. Review/Approval of the CAP. The review and approval of the CAP by EPA shall follow the procedures set forth in Section VI (Review and Approval of Deliverables) of the Consent Decree.

VII. Certification of Compliance

20. At the conclusion of the ELP Implementation Period, or within thirty (30) Days of completion of all tasks required pursuant to Section VI (LDAR Compliance Audits and Corrective Action) of this Appendix A, whichever is later, INDSPEC shall submit a certification to EPA and PADEP certifying that all tasks necessary to comply with the requirements of this Appendix A have been completed and all requirements set forth in this Appendix A have been met. Additionally, such certification shall explicitly indicate that INDSPEC has completed all corrective actions required pursuant to this Appendix A and all Covered Equipment at the Facility has been identified and included in the revised LDAR Manual, in accordance with Paragraph 3 of this Appendix A.

VIII. Reporting

21. Compliance Status Reports. INDSPEC shall submit to EPA and PADEP, in the manner set forth in Section VII (Reporting Requirements) of the Consent Decree, Quarterly and Semi-Annual Compliance Reports regarding, *inter alia*, compliance with this Appendix A.