

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

December 14, 2023 @ 8:21 pm
USEPA – Region II
Regional Hearing Clerk

In the matter of:

Best Petroleum Corp.
Guaynabo, Puerto Rico,

Respondent.

In a proceeding under Section 113(d)
of the Clean Air Act, 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT
AND
FINAL ORDER**

CAA-02-2024-1202

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the “CAA” or “Act”), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.
2. The Complainant is the United States Environmental Protection Agency, Region 2 (the “EPA”). On the EPA’s behalf, the Director of the Enforcement and Compliance Assurance Division (“ECAD”) for EPA Region 2 is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act. Specifically, pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the EPA Administrator has delegated to the Director of the ECAD, through the Regional Administrator of EPA Region 2, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the Commonwealth of Puerto Rico, among other jurisdictions in EPA Region 2.

3. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 111, 112 and 114 of the Act, 42 U.S.C. §§ 7411, 7412, and 7414.

4. Pursuant to EPA Delegation of Authority 7-6-C, the EPA Administrator has delegated to the Regional Administrator of EPA Region 2 the authority to execute CAA Section 113(d) Final Orders.

5. The Respondent is Best Petroleum Corporation (“Best”), a corporation doing business in the Commonwealth of Puerto Rico. The Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

6. The EPA has determined that Best violated the CAA, and implementing regulations promulgated under the CAA. The violations occurred at the bulk gasoline terminal facility (the “Facility”) operated by Best and located at PR-28, Km. 0.2, in Guaynabo, Puerto Rico. Specifically, the EPA has determined that Best violated:

- a. the “New Source Performance Standards for Bulk Gasoline Standards,” 40 C.F.R. Part 60, Subpart XX, § 60.500 *et seq.* (“NSPS Subpart XX”), and
- b. the “National Emission Standards for Hazardous Air Pollutants for Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities,” 40 C.F.R. Part 63, Subpart BBBB, § 63.11080 *et seq.* (“NESHAP Subpart BBBB”).

The violations found by the EPA are set forth below in Section E of this Consent Agreement entitled “Alleged Conclusions of Law.”

7. The Complainant and the Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (“Consent Agreement” or “Agreement”)

and the attached final order (“Final Order” or “Order”) without adjudication of any issues of law or fact herein, and the Respondent agrees to comply with the terms and conditions of this Consent Agreement and Final Order.

B. JURISDICTION

8. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.

9. Pursuant to Section 113(d), the EPA Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

10. The EPA Regional Administrator is authorized to ratify this Consent Agreement which memorializes a settlement between the Complainant and the Respondent. 40 C.F.R. § 22.18(b).

11. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. §§ 22.13(b) and 22.18(b).

C. GOVERNING LAW

CAA Sections 111, 112 and 114

12. Section 111 of the Act provides for “standards of performance” for new and existing stationary sources of air pollution. Under Section 111(b) of the Act, the EPA is required to promulgate standards of performance for new stationary sources, commonly known as New Source Performance Standards (“NSPS”).

13. Section 111(a)(1) of the Act defines “standard of performance” as a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which, taking into account the cost of achieving such reduction and other specified factors, the EPA Administrator determines has been adequately demonstrated.

14. Section 111(a)(2) of the Act defines “new source” as any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed

regulations) prescribing a standard of performance under CAA Section 111 which will be applicable to the source.

15. Section 111(a)(3) of the Act defines “stationary source” as any building, structure, facility, or installation which emits or may emit any air pollutant.

16. Section 111(a)(5) of the Act defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.

17. Section 111(e) of the Act prohibits any owner or operator from operating a source in violation of a Section 111 standard of performance that is applicable to the source.

18. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants (“HAP”), (ii) publish a list of categories and subcategories of major and area sources of those HAP, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.

19. Emissions standards promulgated pursuant to Section 112 are commonly known as National Emission Standards for Hazardous Air Pollutants (“NESHAP”). The NESHAP promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61. The NESHAP promulgated under the CAA after the 1990 CAA amendments are set forth in 40 C.F.R. Part 63.

20. Section 112(a)(1) of the Act defines “major source” as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

21. Section 112(a)(2) of the Act defines “area source” as any stationary source of hazardous air pollutants that is not a major source.

22. Section 112(a)(3) of the Act defines “stationary source” as any building, structure, facility or installation which emits or may emit any air pollutant.

23. Section 112(a)(6) of the Act defines “hazardous air pollutant” as any air pollutant listed pursuant to Section 112(b) of the Act.

24. Section 112(a)(9) of the Act defines “owner or operator” as any person who owns, leases, operates, controls or supervises a stationary source.

25. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the EPA Administrator to set a compliance deadline for existing sources that is no more than three years after the effective date of the standard.

26. Section 114 of the CAA authorizes the EPA Administrator to require, among other things, emission sampling, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with any regulations promulgated under Sections 111 or 112 of the Act.

27. Section 302(e) of the CAA defines “person” to include an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

NSPS Subpart XX

28. Pursuant to Section 111 of the Act, the EPA promulgated NSPS Subpart XX, *see* 48 Fed. Reg. 37590 (Aug. 18, 1983) (as amended).¹

29. 40 C.F.R. § 60.500 provides that the affected facility to which NSPS Subpart XX applies is the total of all the loading racks at a bulk gasoline terminal, the construction or modification of which is commenced after December 17, 1980, which deliver liquid product into gasoline tank trucks.

¹ On June 10, 2022, the EPA proposed a new 40 C.F.R. Part 60, Subpart XXa, *see* 87 Fed. Reg. 35,608. The violations alleged and resolved through this Consent Agreement are of the requirements in the NSPS Subpart XX that were in effect and applicable at the time the alleged violations occurred.

30. 40 C.F.R. § 60.501 defines “bulk gasoline terminal” as any gasoline facility which receives gasoline by pipeline, ship or barge, and has a gasoline throughput greater than 75,700 liters per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State or local law and discoverable by the Administrator and any other person.

31. 40 C.F.R. § 60.501 defines “gasoline” as any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater which is used as a fuel for internal combustion engines.

32. 40 C.F.R. § 60.501 defines “gasoline tank truck” as a delivery tank truck used at bulk gasoline terminals which is loading gasoline or which has loaded gasoline on the immediately previous load.

33. 40 C.F.R. § 60.501 defines “vapor collection system” as any equipment used for containing total organic compounds (“TOC”) vapors displaced during the loading of gasoline tank trucks.

34. 40 C.F.R. § 60.501 defines “vapor processing system” as all equipment used for recovering or oxidizing TOC vapors displaced from the affected facility.

35. The “Standard for Volatile Organic Compound (“VOC”) emissions from bulk gasoline terminals” provisions at 40 C.F.R. § 60.502 provide, among other things, that on and after the date when the bulk gasoline terminal is required to have completed a performance test under 40 C.F.R. § 60.8(a): (a) each affected facility shall be equipped with a vapor collection system designed to collect the TOC vapors displaced from tank trucks during product loading; and (b) the emissions to the atmosphere from the vapor collection system due to the loading of liquid product into gasoline tank trucks are not to exceed 35 milligrams of TOC per liter of gasoline loaded, except as noted in 40 C.F.R. § 60.502(c). 40 C.F.R. § 60.502(a) and (b).

36. Pursuant to the test methods and procedures at 40 C.F.R. § 60.503(a), in conducting the performance tests required in 40 C.F.R. § 60.8, the owner or operator shall use as reference methods

and procedures the test methods in 40 C.F.R. part 60, Appendix A or other methods and procedures specified in 40 C.F.R. § 60.503, except as provided in 40 C.F.R. § 60.8(b). The three-run requirement of 40 C.F.R. § 60.8(f) does not apply to NSPS Subpart XX.

37. Pursuant to the test methods and procedures at 40 C.F.R. § 60.503(b), immediately before the performance test required to determine compliance with 40 C.F.R. § 60.502(b), (c), and (h), the owner or operator shall use Method 21 to monitor for leakage of vapor all potential sources in the terminal's vapor collection system equipment while a gasoline tank truck is being loaded. The owner or operator shall repair all leaks with readings of 10,000 parts per million ("ppm") (as methane) or greater before conducting the performance test. *Id.*

38. 40 C.F.R. § 60.503(c) specifies how to determine compliance with the loading rack operational requirements, including the specifications for gasoline throughput and duration, the TOC emission calculation methodology, the applicable test methods, and the gasoline volume determination method for determining compliance.

39. 40 C.F.R. § 60.8 provides that the owner or operator of an affected facility shall conduct performance test(s) within sixty (60) days after achieving the maximum production rate at which the affected facility will be operated, but not later than one hundred and eighty (180) days after initial startup of such facility, or at such other times specified by 40 C.F.R. Part 60, and at such other times as may be required by the EPA Administrator under Section 114 of the Act, 42 U.S.C. § 7414(a), and shall furnish the EPA Administrator a written report of the results of such performance test(s).

NESHAP Subpart BBBBBB

40. Pursuant to Section 112 of the Act, the EPA promulgated NESHAP Subpart BBBBBB, *see* 73 Fed. Reg. 1933 (Jan. 10, 2008) (as amended).²

² On June 10, 2022, the EPA proposed amendments to NESHAP Subpart BBBBBB, *see* 87 Fed. Reg. 35,608. The violations alleged and resolved through this Consent Agreement are of the requirements in the NESHAP Subpart BBBBBB that were in effect and applicable at the time the alleged violations occurred.

41. 40 C.F.R. § 63.11081(a) provides that NESHAP Subpart BBBBBB applies to the owner or operator of each area source bulk gasoline terminal, pipeline breakout station, pipeline pumping station, and bulk gasoline plant identified in items (1) through (4) below:

- (1) A bulk gasoline terminal that is not subject to the control requirements of 40 C.F.R. Part 63, Subpart R (40 C.F.R. §§ 63.422, 63.423, and 63.424) or 40 C.F.R. Part 63, Subpart CC (40 C.F.R. §§ 63.646, 63.648, 63.649, and 63.650);
- (2) A pipeline breakout station that is not subject to the control requirements of 40 C.F.R. Part 63, Subpart R (40 C.F.R. §§ 63.423 and 63.424);
- (3) A pipeline pumping station; or
- (4) A bulk gasoline plant.

42. 40 C.F.R. § 63.11100 defines “bulk gasoline terminal” as any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank and has a gasoline throughput of 20,000 gallons per day or greater.

43. 40 C.F.R. § 63.11100 defines “equipment” as each valve, pump, pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in the gasoline liquid transfer and vapor collection systems. This definition also includes the entire vapor processing system except the exhaust port(s) or stack(s).

44. 40 C.F.R. § 63.11100 defines “operating parameter value” (“OPV”) as a value for an operating or emission parameter of the vapor processing system (e.g., temperature) which, if maintained continuously by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with the applicable emission standard. The OPV is determined using the procedures specified in 40 C.F.R. § 63.11092(b).

45. 40 C.F.R. § 63.11085(a) provides that each owner or operator of a bulk gasoline terminal subject to NESHAP Subpart BBBBBB must, at all times, operate and maintain any affected source, including

associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

46. 40 C.F.R. § 63.11088(a) provides that the owner or operator of each gasoline loading rack at a bulk gasoline terminal must meet each emission limit and management practice in NESHAP Subpart BBBBBB, Table 2, that applies to it.

47. Pursuant to NESHAP Subpart BBBBBB, Table 2, an owner or operator of a bulk gasoline terminal loading rack(s) with a gasoline throughput (total of all racks) of two hundred and fifty thousand (250,000) gallons per day, or greater, must: (a) equip the loading rack(s) with a vapor collection system designed to collect the TOC vapors displaced from cargo tanks during product loading; (b) reduce emissions of TOC to less than or equal to 80 mg/L of gasoline loaded into gasoline cargo tanks at the loading rack; (c) design and operate the vapor collection system to prevent any TOC vapors collected at one loading rack or lane from passing through another loading rack or lane to the atmosphere; and (d) limit the loading of gasoline into gasoline cargo tanks that are vapor tight using the procedures specified in 40 C.F.R. § 60.502(e) through (j).

48. 40 C.F.R. § 63.11092(a) provides that each owner or operator of a bulk gasoline terminal subject to the emission standard in item 1(b) of NESHAP Subpart BBBBBB, Table 2, must comply with the requirements in 40 C.F.R. § 63.11092(a) through (d).

49. 40 C.F.R. § 63.11092(a)(1) provides that each owner or operator of a bulk gasoline terminal shall conduct a performance test on the vapor processing system and collection system according to 40 C.F.R. § 63.11092(a)(1)(i) or (ii).

50. 40 C.F.R. § 63.11092(a)(1) provides that each owner or operator of a bulk gasoline terminal conducting a performance test on the vapor processing and collection systems must use the test methods and procedures in 40 C.F.R. § 60.503, except a reading of 500 ppm shall be used to determine

the level of leaks to be repaired under 40 C.F.R. § 60.503(b), or use alternative test methods and procedures in accordance with the alternative test method requirements in 40 C.F.R. § 63.7(f).

51. 40 C.F.R. § 63.11092(b) provides that each owner or operator of a bulk gasoline terminal subject to NESHAP Subpart BBBBBB shall install, calibrate, certify, operate, and maintain, according to the manufacturer's specifications, a continuous monitoring system ("CMS") while gasoline vapors are displaced to the vapor processor systems, as specified in 40 C.F.R. §§ 63.11092(b)(1) through (5). For each facility conducting a performance test under 40 C.F.R. § 63.11092(a)(1), and for each facility utilizing the provisions of 40 C.F.R. § 63.11092(a)(2) or (3), the CMS must be installed by January 10, 2011. *Id.*

52. 40 C.F.R. § 63.11092(b)(1)(i) provides that for each bulk gasoline terminal where a carbon adsorption system is used, the owner or operator shall monitor the operation of the system either using a continuous emissions monitoring system ("CEMS") installed in the exhaust air stream capable of measuring organic compound concentration, 40 C.F.R. § 63.11092(b)(1)(i)(A), or, as an alternative, by monitoring vacuum levels using a pressure transmitter installed in the vacuum pump suction line, conducting annual testing of carbon activity for the carbon in each carbon bed, conducting monthly measurements of the carbon bed outlet VOC concentration, and developing and submitting a monitoring and inspection plan in accordance with the requirements set forth in 40 C.F.R. § 63.11092(b)(1)(i)(B). *See* 40 C.F.R. § 63.11092(b)(1)(i)(A) and (B).

53. 40 C.F.R. § 63.11092(b)(3) provides that each owner and operator of a bulk gasoline terminal subject to NESHAP Subpart BBBBBB shall determine an OPV based on the parameter data monitored during the performance test, supplemented by engineering assessments and the manufacturer's recommendations.

54. 40 C.F.R. § 63.11092(b)(4) provides that each owner or operator of a bulk gasoline terminal subject to NESHAP Subpart BBBBBB shall provide for the EPA Administrator's approval the rationale for

the selected OPV, monitoring frequency, and averaging time, including data and calculations used to develop the value and a description of why the value, monitoring frequency, and averaging time demonstrate continuous compliance with the emission standard in 40 C.F.R. § 63.11088(a).

55. 40 C.F.R. § 63.11092(d)(1) provides that each owner or operator of a bulk gasoline terminal subject to NESHAP Subpart BBBBBB shall operate the vapor processing system in a manner not to exceed or not to go below, as appropriate, the OPV for the parameters described in 40 C.F.R. § 63.11092(b)(1).

56. 40 C.F.R. § 63.11092(d)(3) provides that each owner or operator of a bulk gasoline terminal subject to NESHAP Subpart BBBBBB operating a vapor processing system in a manner exceeding or going below the OPV, as appropriate, violates the emission standard in 40 C.F.R. § 63.11088(a), except as specified in 40 C.F.R. § 63.11092(d)(4) (relating to malfunctions).

57. 40 C.F.R. § 63.11094(f)(1) provides that each owner or operator of a bulk gasoline terminal subject to NESHAP Subpart BBBBBB shall keep an up-to-date, readily accessible record of the continuous monitoring data required under 40 C.F.R. § 63.11092(b). This record shall indicate the time intervals during which loadings of gasoline cargo tanks have occurred or, alternatively, shall record the operating parameter data only during such loadings. The date and time of day shall also be indicated at reasonable intervals on this record. *Id.*

58. Pursuant to 40 C.F.R. § 63.11094(f)(2), each owner or operator of a bulk gasoline terminal subject to NESHAP Subpart BBBBBB shall record and report simultaneously with the notification of compliance status required under 40 C.F.R. § 63.11093(b), all data and calculations, engineering assessments, and manufacturer's recommendations used in determining the OPV under 40 C.F.R. § 63.11092(b).

59. 40 C.F.R. § 63.11095(a) provides that each owner or operator of a bulk gasoline terminal subject to the control requirements of NESHAP Subpart BBBBBB shall submit a semi-annual compliance report to the EPA Administrator.

60. 40 C.F.R. § 63.11095(b) provides that each owner or operator of a bulk gasoline terminal subject to the control requirements of NESHAP Subpart BBBBBB shall submit an excess emissions report to the EPA Administrator at the time the semi-annual compliance report is submitted. Excess emissions events under NESHAP Subpart BBBBBB, and the information to be included in the excess emission report, are specified in 40 C.F.R. § 63.11095(b)(1) through (5). *Id.*

61. 40 C.F.R. § 63.11095(b)(3) provides that as part of the excess emissions report submitted to the EPA Administrator, each owner or operator of a bulk gasoline terminal subject to NESHAP Subpart BBBBBB shall include the monitoring data for the days on which exceedances or failures to maintain have occurred, and a description and timing of the steps taken to repair or perform maintenance on the vapor collection and processing systems or the CMS.

NESHAP Subpart A – General Provisions

62. 40 C.F.R. § 63.1(a)(4)(i) provides that each relevant standard in 40 C.F.R Part 63 must identify explicitly whether each provision in 40 C.F.R Part 63, Subpart A is or is not included in such relevant standard.

63. Table 3 to NESHAP Subpart BBBBBB of Part 63, “Applicability of General Provisions,” provides that the requirements in 40 C.F.R. § 63.8(c)(1), including (c)(1)(ii), and the requirements in 40 C.F.R. § 63.8(c)(2) through (8), apply to NESHAP Subpart BBBBBB.

64. 40 C.F.R. § 63.8(c)(1)(ii) provides that the owner or operator of an affected source shall maintain and operate each CMS as specified in 40 C.F.R. § 63.8, or in a relevant standard, and in a manner consistent with good air pollution control practices. The owner or operator must keep the necessary parts for routine repairs of the affected CMS equipment readily available. *Id.*

65. 40 C.F.R. § 63.8(c)(2)(i) and (ii) provide that all CMS must be installed such that representative measures of emissions or process parameters from the affected source are obtained. In addition, CEMS must be located according to procedures contained in the applicable performance specification(s). *Id.* Unless the individual subpart states otherwise, the owner or operator must ensure the read out (that portion of the CMS that provides a visual display or record), or other indication of operation, from any CMS required for compliance with the emission standard is readily accessible on site for operational control or inspection by the operator of the equipment. *Id.*

66. 40 C.F.R. § 63.8(c)(4) provides, in relevant part, that except for system breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level calibration drift adjustments, all CMS, including CEMS, shall be in continuous operation and shall meet minimum frequency of operation requirements as follows: All CEMS for measuring emissions other than opacity shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

D. STIPULATED FACTS

67. The Respondent operates the Facility located at PR-28 Km. 0.2, Pueblo Viejo Ward in Guaynabo, Puerto Rico.

68. The Respondent is a corporation, incorporated in 1986, with its headquarters located in Toa Baja, Puerto Rico.

69. The Facility is owned by the Puerto Rico Land Administration (“PRLA”). The Respondent signed a lease agreement with PRLA to operate the Facility that became effective on March 21, 2018.

70. Best operates the Facility under a minor source air operating permit (“MSAOP”), PFE-32-0212-0240-I-II-O, issued pursuant to Rule 204 of the Puerto Rico Regulation for the Control of Atmospheric Air Pollution and administratively extended by the Puerto Rico Department of Natural and Environmental Resources (“DNER”) until the MSAOP reissuance under a new permit number (PFE-32-0318-0127-I-II-O).

71. On June 8, 2018, EPA Region 2 conducted an on-site inspection of the Facility (“the Inspection”). The Respondent granted the EPA access to the Facility during the Inspection.

72. As part of the Inspection, the EPA inspectors interviewed Facility representatives about general information related to the Facility operations, reviewed records, and conducted a walkthrough of the Facility. The EPA observed various process areas at the Facility, including the gasoline truck loading rack, the vapor processing system/vapor recovery unit (“VRU”), and the gasoline storage tanks.

Internal and External Floating Roof Storage Tanks

73. During the Inspection, the EPA conducted a survey using a FLIR camera and documented increased emissions of VOC venting from the perimeter roof vents from the internal floating roofs (“IFR”) for Tanks 5 and 10, and two vacuum breakers of the external floating roof (“EFR”) for Tank 9.

74. These findings were shared with Best at the conclusion of the Inspection. The videos of the FLIR camera observations were sent to Best on August 13, 2018.

75. On February 25, 2019, the EPA issued a request for information (“RFI”) that required Best to take several actions at the Facility, including measuring the lower explosive limit (“LEL”) at the IFR for Tank 5 and Tank 10, and conducting EPA Method 21 monitoring to measure VOC concentrations at the EFR for Tank 9.

76. On April 25, 2019, in accordance with the RFI, Best performed the LEL measurements within the headspace of IFR Tank 5.³ The highest 15-second average LEL readings were 78% of the LEL and averages were 54% of the LEL, over a 30-minute period for Tank 5.

77. The National Fire Protection Association (“NFPA”) safety standard provides that the lower flammability limit (i.e., LEL) inside tanks should not exceed 25%.

³ Note that while Tank 10 was also included in the EPA’s February 25, 2019, information request, Best took steps in March of 2019 to take Tank 10 out of service to replace its primary and secondary rim seals and conduct an API-653 inspection. Therefore, LEL measurements were conducted at Tank 10 on November 26, 2019, after repairs were completed and it was placed back into service.

78. Both the average and maximum LEL levels measured at IFR Tank 5 were above the level established by the NFPA for safe operations.

79. Best provided information indicating that IFR Tank 10 was taken out of service for repairs on March 19, 2019, and IFR Tank 5 was taken out of service for repairs on May 3, 2019. API-653 inspections were completed on May 6, 2019, for IFR Tank 10, and on May 20, 2019, for Tank 5, which documented damage to the IFRs of these tanks. Best changed the primary and secondary rim seals for Tank 5 and Tank 10 to liquid mounted seals, and made repairs to various components of the IFR for these tanks, which were identified as part of the API-653 inspections. The repairs for Tank 5 and Tank 10 were completed by August 20, 2019, and October 28, 2019, respectively. Tank 5 was refilled and visually inspected as of October 29, 2019. Tank 10 was visually inspected on November 1, 2019, and refilled on November 4, 2019, in accordance with the agreements reached with the DNER.

80. Best replaced the vacuum breakers at the EFR for Tank 9 in August 2018 and November 2018, in response to the vapor losses documented by the FLIR camera during the EPA Inspection.

81. On April 12, 2019, in accordance with the RFI, Best measured the highest VOC concentration of 100,000 ppm at the vacuum breakers of the EFR of Tank 9, using EPA Method 21.

82. The EPA inspected the Facility on November 8, 2019, and again documented increased VOC emissions from the two Tank 9 vacuum breakers using a FLIR camera. Best indicated that as of December 13, 2019, the Tank 9 vacuum breaker gaskets were substituted for gaskets that had a broader range of chemical resistance, in addition to hydrocarbon compounds.

Continuous Emissions Monitoring System ("CEMS")

83. Based on the EPA's Inspection and additional information provided by Best, Best delayed the installment of a functional data acquisition and handling system for the Facility's VRU CEMS, from on or approximately April 27, 2018, through approximately September 20, 2019.

84. Following installation, calibration, and operation of the CEMS on or approximately August 9, 2018, the EPA received CEMS data for the VRU, for August, September and October of 2018, August through December of 2019, and January 2020 through May 5, 2020.

85. The EPA's review of this data showed that the CEMS was not always capable of measuring the actual TOC concentrations in the VRU exhaust air stream. For example, there were numerous dates in the 2019 and 2020 CEMS data that contained multiple one-minute average readings of 5.12%, as propane.

86. Based on information provided by Best on January 24, 2020, a value of 5.12% as propane "represents the maximum value that the VRU's CEMS outlet analyzer is able to read." In other words, the CEMS was not capable of reading any actual organic compound concentrations greater than 5.12% as propane. For any concentrations above this range, a value of 5.12% was recorded; however, the actual values were not measured. Therefore, the EPA alleges that the 6-hour average data used for determining compliance with the applicable OPV of 1.095% as propane is biased low when such data contains repeat values of 5.12% as propane.

87. In addition, during the months for which Best submitted CEMS data to the EPA, until about September 20, 2019, much of the one-minute CEMS data did not contain any numerical value, and instead registered a reading of "N/A."

88. According to Best, the "N/A" readings were caused by a communication problem between the CEMS and the data logging system. Given the number of "N/A" readings prior to September 20, 2019, the EPA alleges that additional limitations existed in determining the 6-hour average emission values necessary for determining compliance with the applicable OPV for the VRU.

89. Due to these data restrictions with the CEMS analyzer and associated data logging system, the EPA alleges that Best was consistently unable to measure actual emissions from the VRU and accurately demonstrate compliance with the applicable OPV for the VRU.⁴

Continuous Monitoring Data

90. From April 27, 2018, when Best commenced gasoline loading operations at the Facility, through approximately August 9, 2018, Best failed to keep an up-to-date, readily accessible record of the continuous monitoring data for the VRU.

Vapor Processing System/VRU

91. Based on a December 10, 2008 VRU performance test, an OPV of 1.095% as propane (6-hour average) was established for the VRU for purposes of demonstrating continuous compliance with the applicable emission standards.

92. This OPV is based in part on the 35 mg/L limit applicable to the VRU, found at section 60.502(b) of NSPS Subpart XX.

93. Based on the EPA's assessment of Best's valid VRU CEMS data from August 1, 2019, through May 5, 2020, the EPA determined that Best exceeded the applicable six-hour OPV on at least thirty (30) days between August 2, 2019 and February 27, 2020.⁵

Failure to Report Exceedances of the OPV

94. Based on the EPA's review of Best's 2019 second semester semi-annual report, dated January 22, 2020, the EPA determined that Best failed to report exceedances of the established OPV that occurred between August 2, 2019, and February 27, 2020.

⁴ The EPA also notes that it identified issues involving the rounding of the CEMS data.

⁵ The EPA has not included in its compliance evaluation the VRU CEMS data from August through October 2018 due to the formatting and quality issues associated with this data. The EPA believes that the actual number of exceedances may be understated given the CEMS compliance demonstration limitations noted in paragraphs 83-89 of this Agreement, which are being resolved through this Agreement.

E. ALLEGED CONCLUSIONS OF LAW

Based on the Stipulated Facts set forth above, the EPA reaches the following Conclusions of Law:

95. The Respondent is a “person,” within the meaning of Section 302(e) of the Act.

96. The Respondent is the “owner or operator” of the Facility as that term is used in CAA Sections 111(a)(5) and 112(a)(9), and 40 C.F.R. §§ 60.2 and 63.2.

97. The Facility is a “stationary source,” as that term is used Sections 111(a)(3) and 112(a)(3) of the Act, and 40 C.F.R. §§ 60.2 and 63.2.

98. At the time of the violations alleged by the EPA in this Consent Agreement, the Respondent was subject to NSPS Subpart XX.

99. At the time of the violations alleged by the EPA in this Consent Agreement, the Respondent was subject to NESHAP Subpart BBBBBB.

100. From approximately April 12, 2019, through approximately December 13, 2019, the Respondent failed to operate and maintain the EFR for Tank 9, in a manner consistent with safety and good air pollution control practices for minimizing emissions, in violation of 40 C.F.R. § 63.11085(a) of NESHAP Subpart BBBBBB. From approximately April 25, 2019, through approximately May 7, 2019, the Respondent failed to operate and maintain the IFR for Tank 5, in a manner consistent with safety and good air pollution control practices for minimizing emissions, in violation of 40 C.F.R. § 63.11085(a) of NESHAP Subpart BBBBBB. The EPA alleges that the Respondent failed to operate and maintain the IFR for the Tank 10, in a manner consistent with safety and good air pollution control practices for minimizing emissions, in violation of 40 C.F.R. § 63.11085(a) of NESHAP Subpart BBBBBB, prior to being taken out of service in March 2019.

101. From approximately April 2018 through January 2020, the Respondent failed to install, calibrate, certify, operate, and maintain, according to the manufacturer’s specifications, a CEMS capable of measuring the TOC concentration in the exhaust air stream while the gasoline vapors are displaced to

the Facility VRU, in violation of 40 C.F.R. § 63.11092(b)(1)(i)(A) of NESHAP Subpart BBBBBB, and 40 C.F.R. § 63.8(c)(1), (2) and (4).

102. From approximately April 2018 through January 2020, the Respondent failed to keep an up-to-date, readily accessible record of the continuous monitoring data required under 40 C.F.R.

§ 63.11092(b), including, but not limited to, the requirement to have records indicating the time intervals during which loadings of gasoline cargo tanks have occurred or, alternatively, recording the operating parameter data only during such loadings, in violation of 40 C.F.R. § 63.11094(f)(1) of NESHAP Subpart BBBBBB.

103. On at least 30 days from approximately August 2, 2019, through February 27, 2020, the Respondent failed to operate the VRU in a manner not to exceed the applicable 6-hour OPV of 1.095% as propane, in violation of 40 C.F.R. §§ 63.11092(d)(1) and (d)(3), and 63.11088(a) of NESHAP Subpart BBBBBB, and 40 C.F.R. § 60.502(b) of NSPS Subpart XX.

104. The Respondent failed to report the exceedances of the established OPV in violation of 40 C.F.R. § 63.11095(b)(3) of NESHAP Subpart BBBBBB.

F. TERMS OF CONSENT AGREEMENT

105. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), the Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement;
- b. neither admits nor denies the factual allegations and alleged violations of law stated above;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the issuance of any specified compliance or corrective action order, as applicable;
- e. consents to the conditions specified in this Consent Agreement;

f. consents to any stated “permit action” (as that term is defined in 40 C.F.R.

§ 22.3(a) of the Consolidated Rules), as applicable;

g. waives any right to contest the alleged violations of law set forth in Section E of this Consent Agreement; and

h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

106. For the purpose of this proceeding, the Respondent:

a. agrees that this Consent Agreement states a claim upon which relief may be granted against the Respondent;

b. acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering the Respondent’s compliance history in any subsequent enforcement actions;

c. consents to the issuance of the attached Final Order;

d. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of fact or law set forth in this Final Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

e. consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Puerto Rico; and

f. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

107. Pursuant to Section 113(d) of the Act, the Respondent shall pay the civil penalty of **\$316,721** (“EPA Penalty”) within 30 calendar days of the effective date specified in Section H of this Consent

Agreement (“Effective Date”). The Respondent shall pay the EPA Penalty using a method provided on the website <https://www.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying each and every payment with “Docket No. CAA-02-2024-1202.” Within 24 hours of payment of the EPA Penalty, the Respondent shall send proof of payment to the following:

Robert Buettner, Manager, Air Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency – Region 2
290 Broadway – 21st Floor
New York, New York 10007

and

Liliana Villatora, Manager, Air Branch
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer in the amount due, and identified with “Docket No. CAA-02-2024-1202,” and any other information required to demonstrate that payment has been made according to the applicable payment method.

108. If the Respondent fails to timely pay the full amount of the EPA Penalty assessed under this Consent Agreement, the EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

d. suspend or revoke the Respondent's licenses or other privileges, or suspend or disqualify the Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

109. Conditions. As a condition of settlement, the Respondent agrees to each of the following:

a. Work already completed. Prior to the Effective Date of this Agreement, Best completed the following work at the Facility:

i. A VRU optimization project that included adding activated carbon to fill both vessels of the VRU above the seam level. Best installed approximately 18 inches of additional carbon depth to the top (discharge end) of the carbon bed inside the 7-foot diameter vessels. This added approximately 1,750 lbs. of activated carbon to each vessel, which creates an approximate 30% increase in the VOC adsorption working capacity of each carbon vessel. In addition, Best installed an interlock system to further optimize the VRU and prevent exceedances of the applicable TOC emission standards. Best agrees to comply with the established OPV limit of 1.095% as propane (6-hour average) for the VRU. Best agrees to operate and maintain the VRU to assure continuous compliance with applicable requirements.

ii. Installation and operation of a new CEMS and Data Acquisition System ("DAS") equipment. This CEMS includes a higher sensing range of up to 7.0% as propane (by volume) and a methane separation system for more accurate VOC measurements. The

DAS calculates rolling 6-hour averages from the CEMS data. Best shall calibrate, certify, operate, and maintain the CEMS and DAS in accordance with applicable requirements.

iii. A storage tank inspection and repair project. Best completed inspections and repairs of various equipment and components at gasoline storage tanks at the Facility, including full rim seal replacements at IFR Tanks 5, 8, and 10, and EFR Tanks 6, 7, and 9. Best shall operate and maintain each tank at the Facility in a manner consistent with safety and good air pollution control practices for minimizing emissions, in accordance with 40 C.F.R. § 63.11085(a) of NESHAP Subpart BBBB.

b. Tank Monitoring – Inspection and Maintenance Plan for External Floating Roof EFR Tanks Storing Gasoline (“EFR Storage Tank Inspection and Maintenance Plan”). Best shall conduct all required tank inspections and monitoring, and all necessary repairs or other corrective action(s), in accordance with the EFR Storage Tank Inspection and Maintenance Plan set forth in subparagraph b.i. through vii., below. Unless otherwise provided by law, the parties agree that the use of EPA Method 21 to monitor EFR tank emissions under this Consent Agreement is only applicable for the purpose of meeting the terms and conditions of this Consent Agreement. Best shall not be required to perform the EFR Storage Tank Inspection and Maintenance Plan outlined in this subparagraph b. for any listed gasoline EFR tank that is not in gasoline service for the duration of any semiannual monitoring event described below. For a listed EFR gasoline tank that has received a product transfer, including refill, within two (2) calendar days before the corresponding semiannual monitoring event described below begins, Best may postpone the required monitoring until the third calendar day after the product transfer, including refill, is completed. If the third calendar day is a Saturday, Sunday, or a federal or Commonwealth of Puerto Rico holiday, the deadline to perform the required

monitoring on any such tank is the next day that is not a Saturday, Sunday, or a federal or Commonwealth of Puerto Rico holiday.

- i. Gasoline EFR Tanks: By no later than December 31, 2023, Best shall conduct a visual inspection of the secondary seal, measure secondary seal gaps, and measure and record the VOC concentrations along the rim seals of each EFR at Tanks 6, 7, and 9, as described below. In addition, by no later than June 30, 2024, Best shall conduct follow-up visual inspections and seal gap measurements for the secondary seals and shall measure and record the VOC concentrations along the rim seals of each EFR at Tanks 6, 7, and 9, for a total of two monitoring events to be conducted in accordance with the terms of this Agreement.
- ii. Secondary seal gap measurements shall be conducted in accordance with the procedures in 40 C.F.R. § 60.113b(b)(2) through (4).
- iii. The VOC concentrations along the EFR rim seals shall be measured using EPA Method 21, as adjusted using the applicable correction factor for gasoline vapor, and shall be conducted during periods when the ambient wind speed is less than 5 miles per hour.
- iv. To the extent practicable, Best will conduct these measurements and inspections when the gasoline tank being monitored is at a different product level compared to the previous measurements and inspections conducted under this subparagraph (e.g., a differential of at least 10 feet).
- v. Vacuum Breaker and Bleeder Vent Gaskets. As part of the initial and follow-up inspections required under this subparagraph b., Best shall conduct visual inspections of the Tank 6, 7, and 9 EFR's vacuum breaker and bleeder vents, and measure and record the VOC concentrations at the surface along the circumference of the cover-well

interface of the vacuum breaker or bleeder vent, and the leg-leg guide interface of the vacuum breaker or bleeder vent, as applicable. The visual inspections of the vacuum breaker or bleeder vent, as applicable, must verify whether the vacuum breaker is in the closed position, and will assess the condition of the vacuum gasket or the bleeder vent and document any deterioration of condition of the vacuum breaker's gasket or bleeder vent seals. The VOC concentration measurements for the vacuum breakers or bleeder vents shall be conducted using EPA Method 21, as adjusted using the applicable correction factor for gasoline vapor, and shall be conducted during periods when the ambient wind speed is less than 5 miles per hour.

vi. Corrective action. For each inspection or measurement conducted under this subparagraph b., Best shall implement the following corrective action measures in (1) through (4), below:

(1) For any findings of the visual inspection or deviations from the rim seal gap measurement requirements, Best shall follow the requirements in 40 C.F.R. § 60.113b(b)(4).

(2) For any Method 21 measurements greater than 500 ppm (after the measurements are adjusted using the applicable correction factor for gasoline vapor) at an EFR rim seal, within ten (10) calendar days of recording any reading greater than 500 ppm, and to the extent practicable when the tank's product level is the same as the when the greater than 500 ppm measurement(s) were made, Best shall perform a visual inspection of the rim seal location(s) where high readings are identified, consistent with the NESHAP Subpart BBBBBB, including 40 C.F.R. § 63.11092(e)(2), and shall make any necessary adjustments or repairs. Best shall conduct a follow-up Method 21 screening within 10

calendar days of completing the initial corrective action, and shall take any additional follow-up corrective actions, if necessary, to bring the VOC concentrations to 500 ppm or less. If the VOC concentrations cannot be reduced to 500 ppm or less after the second attempt at corrective action, Best will promptly consult with the EPA to agree on an appropriate course of action. Best shall initiate this consultation within 5 calendar days of making the second unsuccessful attempt at corrective action.

(3) If all the Method 21 readings recorded for any EFR rim seal are below 500 ppm (adjusted using correction factor for gasoline vapor), no further action is required until the next required monitoring event under this subparagraph b. of this Agreement.

(4) For any findings of a vacuum breaker in the open position, or bleeder vent or vacuum breaker gasket deterioration, or Method 21 measurements greater than 500 ppm (after the measurements are adjusted using the applicable correction factor for gasoline vapor), Best shall submit a written description to the EPA of the completed or planned corrective action(s) to address the findings within 10 calendar days of the visual inspection and/or the VOC concentration measurements. Following submission of each written description, Best and the EPA will promptly consult with one another to determine if the completed or planned corrective action(s) is(are) effective.

vii. Best shall keep complete records of all inspections and measurements conducted under this subparagraph b., and of all required corrective actions taken under subparagraph b.vi.

c. Inspection and Maintenance Program for IFR Tanks Storing Gasoline. Best shall conduct all required tank inspections and monitoring, and all necessary repairs or other corrective action(s), in accordance with the IFR Storage Tank Inspection and Maintenance Plan set forth in subparagraph c.i. through v., below. Unless otherwise provided by law, the parties agree that the use of the LEL measurements to monitor IFR tank emissions under this Consent Agreement is only applicable for the purpose of meeting the terms and conditions of this Consent Agreement. Best shall not be required to perform the IFR Storage Tank Inspection and Maintenance Plan outlined in this subparagraph for any listed IFR gasoline tank that is not in gasoline service for the duration of any semiannual monitoring event described below. For a listed gasoline IFR tank that has received a product transfer, including refill, within 2 calendar days before the corresponding semiannual monitoring event described below begins, Best may postpone the required monitoring until the third calendar day after the product transfer, including refill, is completed. If the third calendar day is a Saturday, Sunday, or a federal or Commonwealth of Puerto Rico holiday, the deadline to perform the required monitoring on any such tank is the next day that is not a Saturday, Sunday, or a federal or Commonwealth of Puerto Rico holiday.

i. By no later than December 31, 2023, Best shall conduct an IFR Visual Inspection of the IFR at Tanks 5, 8, 10, 12, 16 and 17, and measure each tank's LEL level. The IFR Visual Inspection of the tank shall be through roof openings and shall include an inspection of the IFR and rim seal(s). Specifically, the term "IFR Visual Inspection" as used in this Agreement means the process of visually inspecting an IFR and the primary seal or the secondary seal (if one is in service) to determine if the IFR is not resting on the surface of the liquid inside the storage tank; if there is liquid accumulated on the roof; if the seal is detached; if there are holes or tears in the seal fabric; if there are

visible gaps between the seals(s) and the wall of the tank; or if there are any vents or openings that are not maintained in the closed position. For purposes of this Agreement, "LEL" means the minimum concentration of a specific vapor or gas in air, below which propagation of a flame does not occur in the presence of an ignition source. In addition, by no later than June 30, 2024, Best shall conduct follow-up IFR Visual Inspections and LEL measurements, for a total of two monitoring events for each IFR tank storing gasoline to be conducted in accordance with the terms of this Agreement.

ii. Procedures for measuring LEL percentage. For all LEL measurements conducted pursuant to this subparagraph c., Best shall follow these procedures:

- (1) The LEL measurements shall be conducted by sampling the vapor space within three (3) feet of the top of the IFR using an LEL meter with data logging capability;
- (2) The IFR shall not be in motion during sampling;
- (3) The LEL meter shall be calibrated prior to each use, and the date and time shall be set to local time. If extended sample collection tubing for the LEL meter will be used, Best shall demonstrate that the LEL meter is capable of being successfully calibrated with the length of sample tubing to be used;
- (4) Data logging of the LEL measurements shall be in fifteen (15)-second intervals and measurements shall be done for thirty-five (35) minutes, with the first 5 minutes of data to be disregarded. Best shall calculate a 30-minute average of valid LEL measurements, i.e., the average of the valid data for minute six (6) through minute 35, as adjusted using the appropriate correction factor(s) ("30-Minute Average LEL Measurement"); and

(5) LEL measurements shall be adjusted using LEL correction factor(s) specific to the LEL meter being used, and based on the liquid being stored in the tank (i.e., a gasoline correction factor is to be used for gasoline).

iii. Corrective action. If, during any IFR Visual Inspection or LEL measurements required by this subparagraph c.:

- (1) the internal floating roof is not resting on the surface of the liquid inside the tank and is not resting on the leg supports;
- (2) there is liquid on the floating roof;
- (3) the seal(s) is(are) detached;
- (4) there are holes or tears in the seal fabric;
- (5) there are visible gaps between the seals(s) and the wall of the tank;
- (6) there are any vents or openings required to be maintained in the closed position but that are not closed; or
- (7) the 30-minute Average LEL Measurement, as adjusted using the appropriate correction factor(s) (the "30-Minute Average Measurement"), is greater than 25% of the LEL:

Then Best shall, within forty-five (45) calendar days of the IFR Visual Inspection or LEL measurement, repair the items to correct the specific failure(s) discovered ("Required IFR Repairs").

iv. Within 10 calendar days after completion of any Required IFR Repairs, Best shall conduct a follow-up Visual Inspection and shall re-monitor the tank's LEL using the procedures in subparagraph c.ii, above, to confirm that the specific failure(s) was(were) corrected and the tank is in good working order. However, if any of the failures listed in subparagraph c.iii., above, are again observed or measured during the follow-up Visual

Inspection or LEL measurements, Best shall take additional corrective action(s), as necessary, to eliminate the deficiency/deficiencies and to bring the LEL to below 25%. If the failure(s) cannot be corrected after the second attempt at corrective action, Best shall promptly consult with the EPA to agree on an appropriate course of action. Best shall initiate this consultation within 5 calendar days of confirming that the second attempt at making the IFR repairs was unsuccessful.

v. The Respondent shall keep complete records of the inspections and measurements conducted under this subparagraph c., and of all IFR repairs and corrective actions.

d. Reporting. The Respondent shall submit to the EPA the following information:

i. on a semi-annual basis during the effective period of this Agreement (for a total of 2 reports), an Excel spreadsheet with all CEMS data and calculated 6-hour averages for the VRU for the previous 6-month period. The first semi-annual report shall be due by 180 days after the Effective Date of this Agreement, and the second semi-annual report shall be due no later than three hundred and sixty-five (365) days after the Effective Date of this Agreement. The reports together shall cover a consecutive 12-month period without interruption.

ii. all records required for each EFR and IFR storage tank under subparagraphs b.vii., and c.v., above, shall be submitted within fifteen (15) calendar days of completion of each required inspection, measurement, or corrective action(s) or IFR repairs. In the event a contractor is used for the inspections and/or monitoring, Best shall provide the relevant documentation within 15 calendar days of receipt from the contractor, but in no event later than 20 calendar days after completion of the inspections and monitoring.

iii. Information which confirms that a tank is exempted from compliance with the EFR and IFR Storage Tank Inspection and Maintenance Plan under subparagraphs b. and c., above, if applicable.

iv. all reports and information submitted under this Agreement shall be sent by electronic mail to the following:

Alex Rivera
rivera.alex@epa.gov

and

Julian Velez
velez.julian@epa.gov

and

Robert Buettner
buettner.robert@epa.gov

and

Liliana Villatora
villatora.liliana@epa.gov

110. The Respondent agrees that the time period from the Effective Date of this Agreement until all of the Conditions specified in Paragraph 109 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in Section E of this Consent Agreement. The Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

111. The provisions of this Consent Agreement shall apply to and be binding upon the Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors,

and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 110, the Respondent must give written notice and a copy of this Consent Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, the Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, the Respondent shall not be released from the obligations or liabilities of this Consent Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

112. Force majeure. Best agrees to comply with and abide by the following:

- a. Best shall carry out and perform the terms, conditions and requirements of this Consent Agreement within the time limits established in or pursuant to this Consent Agreement, unless such compliance or performance, in whole or in part, is prevented or delayed by any event(s) that constitutes a force majeure.
- b. For purposes of this Consent Agreement, a force majeure is defined as any event(s) arising from a cause(s) or a circumstance(s) not reasonably foreseeable and beyond Best's control, and which event(s) could not be overcome or obviated by due diligence, and which prevents or delays the performance, in whole or in part, of any term, condition or requirement of this Consent Agreement, except for the civil penalty provisions in Paragraphs 107 and 108, above, by a date required by this Consent Agreement.
- c. A force majeure event(s) specifically shall not include any unanticipated or increased costs or expenses of complying with or performing the terms, conditions and requirements of this Consent Agreement, or any inability to pay the civil penalty.
- d. Whenever a cause(s) or a circumstance(s) occurs that might delay or prevent the completion or performance, in whole or in part, of any term, condition or requirement of this Consent Agreement, Best shall notify the EPA of said cause(s) or circumstance(s) within 5

calendar days after Best first became aware or should have become aware of such a cause(s) or circumstance(s). Such notice shall be sent to the EPA contacts listed in Paragraph 109.d.iv., above, at their respective addresses and via email. Such notice shall specifically include the reasons for and the anticipated duration of the delay, any action Best has taken or will take to prevent and/or minimize the delay, and a timetable estimating the implementation of the aforementioned measures to prevent and/or minimize the delay.

e. Best's failure to timely comply with the aforementioned notice provision shall constitute a sufficient ground for the EPA to deny Best an extension of time to complete performance.

f. Best shall adopt and undertake all reasonable measures to prevent and/or minimize the aforementioned delay.

g. Best shall have the burden, by a preponderance of the evidence, of proving force majeure as a defense to any noncompliance with, or non-performance of, in whole or in part, any term, condition or requirement of this Consent Agreement. If the EPA agrees that the given delay or non-performance is attributable to force majeure, then the time for performance of the obligations that are directly affected by the force majeure event will be extended for a period of time determined by the EPA, not to exceed the actual duration of the delay caused by the force majeure event. An extension of time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any other obligations.

113. By signing this Consent Agreement, the Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

114. By signing this Consent Agreement, the undersigned representative of the Complainant and the undersigned representative of the Respondent each certify that he or she is fully authorized to execute

and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

115. By signing this Consent Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

116. By signing this Consent Agreement, the Respondent certifies that the information it has supplied concerning this matter was, upon information and belief, at the time of submission true, accurate, and complete for each such submission, response, and statement. The Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

117. Except as qualified by Paragraph 108.a, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

118. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only the Respondent's liability to the United States for federal civil penalties for the violations specifically alleged above.

119. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

120. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

121. The terms, conditions, and compliance requirements of this Consent Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the EPA Regional Administrator or other delegate.

122. Any violation of this Final Order may result in the EPA pursuing a civil judicial action for an injunction or civil penalties of up to \$117,468 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2) (as adjusted for inflation pursuant to 40 C.F.R. § 19.4), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Consent Agreement and Final Order in an administrative, civil judicial, or criminal action. The Respondent reserves and may assert any available argument and defense, and may use any information submitted under this Consent Agreement and Final Order, in response to any such action pursued by EPA.

123. Nothing in this Consent Agreement shall relieve the Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

124. Nothing herein shall be construed to limit the power of the EPA to undertake any action against the Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

125. The EPA reserves the right to revoke this Consent Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Consent Agreement, that any information provided by the Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. Under such circumstance, the Respondent reserves the right to assert any available argument and defense to any such claim by EPA. The EPA shall give the Respondent notice of its intent to revoke, which shall not be effective until received by the Respondent in writing.

H. EFFECTIVE DATE

126. The Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the EPA Regional Administrator, on the date of filing with the Hearing Clerk.

Signatures

The foregoing Consent Agreement *In the Matter of Best Petroleum Corp.*, Docket No. CAA-02-2024-1202, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR THE RESPONDENT:

DocuSigned by:

F95298B6E58E406...

Antonio De Jesus-Nieves
President and Chief Executive Officer
Best Petroleum Corp.
Carr. #2 Km. 20.5, Bo. Candelaria
Toa Baja, Puerto Rico 00949

FOR THE COMPLAINANT:

Kate Anderson, Acting Director
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region 2

In the Matter of Best Petroleum Corp.
CAA-02-2024-1202

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Regional Administrator of the EPA Region 2, concurs in the foregoing Consent Agreement, *In the Matter of Best Petroleum Corp.*, CAA-02-2024-1202. The attached Consent Agreement resolving this matter, entered into by the parties, is incorporated by reference into this Final Order and is hereby approved, ratified and issued.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

SO ORDERED.

Lisa F. Garcia
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway, 26th Floor
New York, New York 10007