

76. U.S. EPA and TPI each shall have the right to change their respective City of Alma SEP Project Coordinators, and the City of Alma shall have the right to change its SEP Project Contact Person. Such a change shall be accomplished by notifying the others in writing as soon as practicable before or after the change occurs.

77. The City of Alma SEP Project Coordinators shall use their best efforts to facilitate timely and consistent communications regarding all issues arising under Section VII of this Decree. Whenever possible, the City of Alma SEP Project Coordinators shall attempt to resolve disputes informally through good faith discussion of the issues.

78. Except where explicitly stated otherwise, TPI shall send all submissions, plans, reports, notices, correspondence or other documents required under Section VII of this Decree to U.S. EPA's City of Alma SEP Project Coordinator and to the City of Alma SEP Contact Person. U.S. EPA Region 5 shall send all notices, comments, correspondence, or other documents to TPI's City of Alma SEP Project Coordinator and to the City of Alma SEP Contact Person. Submission of all plans, reports, notices, comments, correspondence or other documents shall be effective as of the date of mailing.

79. In addition to the procedures set forth in Paragraph 78, U.S. EPA's City of Alma SEP Project Coordinator shall transmit a copy of all written or electronic correspondence that he/she transmits to TPI's City of Alma SEP Project Coordinator and to the City of Alma SEP Contact Person to the following person:

Steven O. Epperson  
Vice President, Environmental, Health, & Safety  
Ultramar Diamond Shamrock Corporation  
P.O. Box 696000  
San Antonio, Texas 78269-6000  
or, for express mail:  
6000 North Loop 1604 West  
San Antonio, Texas 78249-1112  
Phone: (210) 592-4623  
Email: steve\_epperson@udscorp.com

By written agreement with U.S. EPA's City of Alma SEP Project Coordinator, TPI may change the person whom U.S. EPA's City of Alma SEP Project Coordinator copies on all written and electronic correspondence. Disputes over any such substitution shall be resolved in accordance with the administrative dispute resolution provisions of Paragraph 69.

80. Within ninety (90) days of the completion of the City of Alma SEP, TPI shall submit a City of Alma SEP Project Completion Report to U.S. EPA's City of Alma SEP Project Coordinator. The City of Alma SEP Project Completion Report shall contain the following information:

- a. A description of the project as implemented;
- b. A description of any problems encountered, and the solutions thereto;
- c. Itemized costs, with appropriate documentation including, for example, copies of purchase orders and receipts or canceled checks;
- d. Certification that the project has been fully implemented pursuant to the provisions of this Consent Decree; and
- e. A description of the environmental and public health benefits from implementation of the SEP (with a quantification of the benefits and pollution reductions, if feasible).

81. Upon receipt of the City of Alma SEP Project Completion Report, U.S. EPA shall:  
(a) approve the report; (b) disapprove the report in whole or in part; (c) approve the report upon

specified conditions; or (d) any combination of the above. By no later than sixty (60) days after U.S. EPA notifies TPI of its disapproval or its direction to modify the City of Alma SEP Project Completion Report, TPI shall submit a modified report to U.S. EPA for approval. TPI may request an extension to this period, but all such requests by TPI and all responses by U.S. EPA shall be in writing.

82. In the event that the resubmitted City of Alma SEP Project Completion Report is disapproved in whole or in part or approved with conditions by U.S. EPA, U.S. EPA may again require TPI to resubmit the City of Alma SEP Project Completion Report and/or include the conditions in a further revised Report.

83. In expending funds on the City of Alma SEP Project, TPI shall leave sufficient funds, within its nine hundred thousand dollar (\$900,000) cap, to enable it to prepare and submit a City of Alma SEP Project Completion Report, and prepare and submit one resubmission based upon and incorporating comments received from U.S. EPA on the first submission. If TPI leaves insufficient funds, within the nine hundred thousand dollar (\$900,000) cap, to enable it to prepare and submit a City of Alma SEP Project Completion Report and one resubmission, TPI shall independently provide funds to enable it to do so. Provided that TPI incorporates into its resubmission all of U.S. EPA's technical comments on TPI's first submission, TPI shall not be required to provide any additional, independent funds for the City of Alma SEP Project Completion Report, and the resubmitted Report shall be deemed final.

#### **VIII. GENERAL SUPPLEMENTAL ENVIRONMENTAL PROJECT PROVISIONS**

84. By signing this Consent Decree, TPI certifies that it is not required, and has no liability under any federal, state or local law or regulation, or pursuant to any agreements or orders

of any court, to perform or develop the SEPs identified in Sections VI and VII of this Decree. TPI further certifies that it has not received, and will not in the future receive, credit as a SEP or other penalty offset in any other enforcement action for such projects.

85. Any public statement, oral or written, made by TPI making reference to the SEPs set forth in Sections VI and VII of this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action undertaken by the United States."

86. Throughout the duration of the implementation of the SEPs in Sections VI and VII of this Decree, and until one year after U.S. EPA's approval of the Project Completion Reports for each of the SEPs, TPI shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to U.S. EPA pursuant to Sections VI and VII of this Decree, including all records of costs incurred for the projects, and shall make such materials available to the United States upon request. TPI may assert that certain documents, records or other information is privileged under the attorney-client privilege, the work product doctrine or any other privilege recognized by federal law. If TPI asserts such a privilege in lieu of providing documents, TPI shall provide U.S. EPA with 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 the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by TPI. However, no data, documents, reports or other information required to be submitted pursuant to the requirements of this Decree shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to

U.S. EPA in redacted form to mask the privileged information only. Any disputes arising under this Paragraph shall be resolved in accordance with Section XVII of this Decree.

**IX. CIVIL PENALTY FOR PAST VIOLATIONS**

87. No later than thirty (30) days after entry of this Consent Decree, TPI shall pay a civil penalty of four million dollars (\$4,000,000). Payment shall be made by Electronic Funds Transfer (“EFT”) to the United States Department of Justice, referencing USAO File Number 1998-VO-0377, DOJ Case Number 90-5-2-1-2199, and the civil action case name and case number of the Eastern District of Michigan. The costs of such electronic funds transfer shall be the responsibility of TPI. Payment shall be made in accordance with instructions provided to TPI by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Michigan. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. TPI shall provide notice of payment, referencing USAO File Number 1998-VO-0377, DOJ Case Number 90-5-2-1-2199, and the civil action case name and case number, to DOJ and the Office of Regional Counsel of Region 5 of U.S. EPA, as provided in Section XVIII (“Notices and Submissions”).

88. TPI shall pay interest on any unpaid balance of the civil penalty owed to the United States, which shall begin to accrue at the end of the thirty (30) day period described above, at the rate established by the Department of the Treasury under 31 U.S.C. 3717.

89. Upon entry of this Decree, this Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, and other applicable federal authority. The United States shall be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

**X. STIPULATED PENALTIES**

90. TPI shall be liable for the following stipulated penalties for violations of the requirements of this Decree:

a. In addition to any interest, for each day that any amount of the civil penalty due under this Decree is not paid when due, \$2,500.

b. For each day that any amount of the funds required to be transferred to the Sediment Remediation Account pursuant to Paragraph 52 is not transferred when due, \$2,500.

c. With respect to Paragraph 11 of this Decree, for each violation of the environmental requirements that apply to the Alma Refinery, from the date of entry of this Decree until termination of Subsection IV.A:

<u>Number of Days of Violation</u>	<u>Penalty per Day per Violation</u>
1-15	\$ 1,000
16-30	\$ 2,000
31-60	\$ 3,000
Over 60	\$ 5,000

d. For each failure to comply with any requirement of Section IV of the Consent Order entered into between MDEQ and TPI, except for any failure for which U.S. EPA demands stipulated penalties under Subparagraph 90c:

<u>Number of Days of Violation</u>	<u>Penalty per Day per Violation</u>
1-15	\$ 500
16-30	\$ 750
Over 30	\$ 1,000

e. For failure to comply with Paragraph 13 of this Consent Decree or any requirement of the Consent Order entered into between MDEQ and TPI other than Section IV, \$100 per day of noncompliance for the first five (5) days, and \$500 per day thereafter. Provided, however,

that TPI shall not be liable for stipulated penalties under this Subparagraph if U.S. EPA has demanded stipulated penalties under Subparagraph 90c for the same failure or violation.

f. For each failure to send any correspondence relating to or drafts of the corrective action consent order identified in Paragraph 15 exchanged between TPI and MDEQ to the Enforcement and Compliance Assurance Branch of the Waste, Pesticides, and Toxics Division of U.S. EPA Region 5, \$100 per day of noncompliance for the first five (5) days, and \$500 per day thereafter.

g. For each failure to invite a representative of the Enforcement and Compliance Assurance Branch of the Waste, Pesticides, and Toxics Division, to participate in any substantive meetings, conferences or other communications between TPI and the MDEQ regarding the negotiation of the corrective action consent order, \$1,000.

h. For each failure to timely submit any report or notice required pursuant to (i) Paragraph 12 (quarterly reports on environmental compliance); (ii) Paragraph 44 (quarterly reports on status of Sediment Remediation SEP); or (iii) Paragraph 53 (notice of the name of the bank, nature of the account, and other information relating to the Sediment Remediation Account):

<u>Period of Delay</u>	<u>Penalty per day</u>
Days 1-30	\$ 500
Days 31-60	\$ 1,000
Over 60 days	\$ 2,000

i. For each failure to timely submit: (i) the Sediment Remediation Project Work Plan, (ii) the Sediment Characterization Report; (iii) the Sediment Remediation Evaluation and Selection Report; (iv) the Engineering and Design Plan; (v) the Sediment Remediation Project Completion Report; (vi) the negotiated contract regarding the City of Alma SEP required pursuant

to Paragraph 63; or (vii) the City of Alma SEP Project Completion Report:

<u>Period of Delay</u>	<u>Penalty per day</u>
Days 1-30	\$ 1,000
Days 31-60	\$ 2,000
Over 60 days	\$ 3,000

j. For each failure to meet (i) any interim or final milestones set forth in the Engineering and Design Plan described in Subsection VI.B; or (ii) any milestone representing the date on which any permit application under Subsection VI.B is due; or (iii) any milestones set forth in the approved contract for the City of Alma SEP:

<u>Period of Delay</u>	<u>Penalty per day</u>
Days 1-30	\$ 1,000
Days 31-60	\$ 2,000
Over 60 days	\$ 3,000

k. For stipulated penalties pursuant to Paragraphs 41, 42, 69, or 70:

<u>Period of Noncompliance</u>	<u>Penalty per day</u>
Days 1-30	\$ 1,000
Days 31-60	\$ 2,000
Over 60 days	\$ 3,000

l. For utilizing funds in the Sediment Remediation Account for any purpose other than the Sediment Remediation Project, TPI shall reimburse the Account in the amount of any such funds used for such other purpose, plus interest on those funds at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and, in addition, \$2,500 per day, commencing on the day of the misuse of such funds, until the Account is reimbursed.

91. In the event that TPI fails or is unable to comply with any of the terms or provisions of this Decree relating to the performance of the Sediment Remediation SEP described in Section VI

of this Decree, whether due to a Force Majeure event or otherwise, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the amounts required to be spent in that Section, TPI shall be liable for stipulated penalties according to the provisions set forth below:

a. Except as provided in Subparagraph 91.b, if TPI does not satisfactorily complete the Sediment Remediation SEP in Section VI of this Decree, but TPI spends at least \$9,000,000, TPI shall pay as a stipulated penalty the balance of the funds, if any, in the Sediment Remediation Account, plus two million dollars (\$2,000,000).

b. If TPI does not satisfactorily complete the Sediment Remediation SEP in Section VI of this Decree, but TPI: (i) establishes that it has made good faith and timely efforts to complete the Project; and (ii) certifies, with supporting documentation, that TPI has spent at least eight million, one hundred thousand dollars (\$8,100,000) on the Sediment Remediation SEP, TPI shall not be required to pay a stipulated penalty.

c. If TPI does not satisfactorily complete the Sediment Remediation SEP in Section VI of this Decree, but TPI: (i) establishes that it has made good faith and timely efforts to complete the Project; (ii) establishes that it was not responsible for its inability to satisfactorily complete the Project (e.g., despite best efforts, necessary access to undertake the project could not be obtained); and (iii) spends less than eight million, one hundred thousand dollars (\$8,100,000) on the Sediment Remediation SEP, TPI shall pay as a stipulated penalty the balance of the funds in the Sediment Remediation Account.

d. If TPI satisfactorily completes the Sediment Remediation SEP in Section VI of this Decree, but TPI spends less than eight million, one hundred thousand dollars (\$8,100,000), TPI shall pay as a stipulated penalty the balance of the funds in the Sediment Remediation Account.

e. If TPI satisfactorily completes the Sediment Remediation SEP in Section VI of this Decree, and TPI spends at least eight million, one hundred thousand dollars (\$8,100,000), TPI shall not be required to pay a stipulated penalty.

f. In any dispute resolution proceeding under Section XVII of this Decree that involves a demand for stipulated penalties under this Paragraph, where a question arises as to whether TPI has “satisfactorily completed” the Sediment Remediation SEP, TPI shall not be precluded from asserting, inter alia, that any alleged failure by TPI to “satisfactorily complete” the Sediment Remediation SEP was caused in whole or in part by unreasonable delays by U.S. EPA in approving the plans and reports required to be approved, or by unreasonable actions of U.S. EPA in withholding approval of the plans and reports required to be approved.

92. In the event that TPI fails or is unable to comply with any of the terms or provisions of this Decree relating to the performance of the City of Alma SEP described in Section VII of this Decree, whether due to a Force Majeure event or otherwise, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the amounts required to be spent in that Section, TPI shall be liable for stipulated penalties according to the provisions set forth below:

a. Except as provided in Subparagraph 92.b, if TPI does not satisfactorily complete the City of Alma SEP in Section VII of this Decree, but TPI spends at least nine hundred thousand dollars (\$900,000), TPI shall pay a stipulated penalty of two hundred thousand dollars (\$200,000).

b. If TPI does not satisfactorily complete the City of Alma SEP in Section VII of this Decree, but TPI: (i) establishes that it has made good faith and timely efforts to complete the Project; and (ii) certifies, with supporting documentation, that TPI has spent at least eight hundred,

ten thousand dollars (\$810,000) on the City of Alma SEP, TPI shall not be required to pay a stipulated penalty.

c. If TPI does not satisfactorily complete the City of Alma SEP in Section VII of this Decree, but TPI: (i) establishes that it has made good faith and timely efforts to complete the Project; (ii) establishes that it was not responsible for its inability to satisfactorily complete the Project (e.g., the City of Alma would not sign a contract that U.S. EPA approved); and (iii) spends less than eight hundred, ten thousand dollars (\$810,000) on the City of Alma SEP, TPI shall pay as a stipulated penalty the difference between the amount that TPI has expended and nine hundred thousand dollars (\$900,000).

d. If TPI satisfactorily completes the City of Alma SEP in Section VII of this Decree, but TPI spends less than eight hundred, ten thousand dollars (\$810,000), TPI shall pay as a stipulated penalty the difference between the amount that TPI has expended and nine hundred thousand dollars (\$900,000).

e. If TPI satisfactorily completes the City of Alma SEP in Section VII of this Decree, and TPI spends at least eight hundred, ten thousand dollars (\$810,000), TPI shall not be required to pay a stipulated penalty.

93. Except as otherwise provided in this Decree, TPI's liability for stipulated penalties shall begin to accrue from the first day of noncompliance with any applicable provision of this Consent Decree, and shall continue to accrue through the date that complete performance occurs or the date complete correction of the noncompliance occurs. Stipulated penalties shall accrue regardless of whether U.S. EPA has made a demand for payment, but shall not be payable until written demand by U.S. EPA. U.S. EPA's written demand to TPI shall set forth the bases of the