

Consent Decree violation(s). Stipulated penalties shall not accrue, with respect to judicial review by this Court under Section XVII of this Decree, during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

94. If TPI disputes U.S. EPA's demand for stipulated penalties, TPI shall invoke the dispute resolution provisions of Section XVII of this Decree within sixty (60) days of receipt of U.S. EPA's demand for payment of stipulated penalties. Invocation of the dispute resolution provisions shall occur when TPI complies with the notice requirements in Paragraph 119 of Section XVII. Unless TPI invokes the dispute resolution provisions of this Decree, payment of stipulated penalties shall be made within sixty (60) days of the date of a written demand for payment. If stipulated penalties payable under this Decree are not paid when due, interest shall accrue on any amounts overdue to the United States from the first day after the stipulated penalties are due through the date of payment at the rate of interest established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

95. Any stipulated penalties, including accrued interest, incurred by TPI shall be paid by certified or cashier's check payable to "Treasurer, United States of America," and shall reference USAO File Number 1998-VO-0377, DOJ Case Number 90-5-2-1-2199, and the civil action case number and case name of this action within the Eastern District of Michigan. Checks shall be tendered to the Financial Litigation Unit of the United States Attorneys Office for the Eastern District of Michigan, Northern Division, 101 First St., Suite 200, Bay City, Michigan 48706, and shall be accompanied by a letter specifying the specific stipulated penalty provision involved, and a description of the violation(s) of this Decree for which the stipulated penalties are being tendered.

Simultaneously, a copy of the check and letter shall be sent to the Office of Regional Counsel of U.S. EPA Region 5, and to DOJ, as provided in Section XVIII (“Notices and Submissions”).

96. The invocation of dispute resolution procedures under Section XVII shall not of itself extend or postpone any of TPI’s or the SGP Defendants’ obligations under this Consent Decree, but TPI’s obligation to pay stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Penalties shall accrue as provided in Paragraph 93 during any dispute resolution period, but need not be paid until the following:

- a. If the dispute is resolved by agreement of the parties, accrued penalties determined to be owing shall be paid to U.S. EPA within fifteen (15) days of TPI’s receipt of a written demand for payment by U.S. EPA following the agreement;
- b. If the dispute is referred to the Court for resolution and the U.S. EPA prevails in whole or in part, TPI shall pay all accrued penalties determined by the Court to be owed to U.S. EPA within sixty (60) days of receipt of the Court’s decision, except as provided in Subparagraph c, below;
- c. If the District Court’s decision is appealed by any party, TPI shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court’s decision. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the escrow account to U.S. EPA or to TPI to the extent that it/they prevail.

97. Except as otherwise specifically provided in this Decree, nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

98. The United States may, in its unreviewable discretion, waive payment of any portion of any stipulated penalties that may accrue under this Consent Decree.

99. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the rights of the United States to seek additional remedies or sanctions, including but not limited to additional injunctive relief or statutory penalties for TPI's or the SGP Defendants' violations of this Decree, the CAA, RCRA, the CWA, or the SDWA.

XI. COMPLIANCE WITH APPLICABLE LAWS

100. This Consent Decree in no way relieves TPI or the SGP Defendants of their responsibility to comply with all applicable federal, state, or local laws, regulations or permits. Except as provided in Section XII, compliance with this Consent Decree shall not constitute a defense to any action pursuant to said laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT

101. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint in this action through the date of lodging this Consent Decree with the District Court. Nothing in this Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree.

XIII. RESERVATION OF RIGHTS

102. Except as specifically provided in Section XII, the entry of this Consent Decree shall not limit or otherwise preclude the United States from taking additional enforcement action with regard to the Alma Refinery or the other facilities identified in Exhibits 2 - 5 pursuant to any federal law or regulation or federally enforceable state law, regulation, or permit condition.

103. U.S. EPA reserves the right, consistent with Subsection IV.C, to take or order corrective action with regard to the Alma Refinery pursuant to any federal law or regulation or federally enforceable state law, regulation, or permit condition as U.S. EPA deems necessary to

protect human health or the environment. TPI reserves all of its rights and defenses with respect to such action.

104. Nothing herein shall be construed to limit the authority of the United States to undertake any action against any person, including TPI or the SGP Defendants, to abate or correct conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment, or for any other violation of law or regulation. TPI and the SGP Defendants reserve all of their rights and defenses with respect to action taken by the United States contemplated in this Paragraph.

105. This Consent Decree does not limit or affect the rights of TPI or the SGP Defendants or the United States against any third parties nor the rights of third parties not parties to this Consent Decree against any other parties.

106. The United States reserves any and all legal and equitable remedies, sanctions, and penalties which may be available to the United States to enforce the provisions of this Consent Decree against TPI and the SGP Defendants, and further reserves the right to take any other action authorized by federally enforceable state law, regulation, or permit condition to achieve or maintain compliance with this Consent Decree.

107. The failure of TPI or the SGP Defendants to comply with any requirement contained in this Decree shall not excuse the obligation to comply with all of the other requirements contained herein.

108. Nothing in this Consent Decree is intended to nor shall be construed to operate in any way to allege or resolve any criminal liability of TPI or the SGP Defendants, any liability for injury to, destruction of, or loss of natural resources or for the costs of any natural resource damage

assessments, or any liability under the Comprehensive Environmental Response, Compensation and Liability Act.

109. Neither this Decree nor any actions taken hereunder shall constitute an admission by TPI or the SGP Defendants of the occurrence of or of liability for the violations alleged in the Complaint.

XIV. NOT A PERMIT

110. This Decree is neither a permit nor a modification of existing permits under any federal, state, or local law and in no way relieves TPI or the SGP Defendants of their responsibility to comply with all applicable federal, State, and local laws and regulations.

XV. ACCESS

111. Commencing on the date of lodging of this Consent Decree and continuing until this Consent Decree is terminated, the United States and its representatives, including U.S. EPA and its contractors, shall have the authority to enter the Alma Refinery or the other facilities identified in Exhibits 2 - 5 at all reasonable times for the purposes of: (i) monitoring compliance with this Consent Decree; (ii) verifying any data, test results, or information submitted in accordance with this Consent Decree; (iii) obtaining copies of documents, including without limitation computer files, operating and field logs, photographs, contracts, manifests, shipping records and other relevant records, maintained or generated by TPI or the SGP Defendants or their agents related to compliance with this Consent Decree; (iv) overseeing any and all work performed under the Sediment Remediation Project provisions of this Consent Decree; and (v) conducting any tests necessary to ensure compliance with the Consent Decree and to verify the data submitted by TPI or the SGP Defendants.

112. Nothing in this Consent Decree in any way limits any right of entry or access available to U.S. EPA pursuant to applicable federal, state or local laws, regulations or permits.

XVI. FORCE MAJEURE

113. A force majeure is defined as any event arising from causes beyond the control of TPI or the SGP Defendants, or of any entity controlled by TPI or the SGP Defendants, including a contractor or consultant, that delays or prevents the performance of any obligation under this Consent Decree, despite the best efforts of TPI or the SGP Defendants, or their contractors or consultants, to fulfill the obligation. The requirement to use “best efforts to fulfill the obligation” includes using best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible under the circumstances. Force Majeure does not include financial inability to complete the obligations of this Consent Decree; provided however, that nothing in this Section shall require TPI to fund the Sediment Remediation Project for an amount greater than that set forth in Paragraph 52 or to fund the City of Alma SEP for an amount greater than that set forth in Paragraph 65.

114. 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, TPI or the SGP Defendant(s) shall notify the Office of Regional Counsel of Region 5 of U.S. EPA and, (i) if the delay involves Section VI of this Decree, U.S. EPA’s Sediment Remediation Project Coordinator, or (ii) if the delay involves Section VII of this Decree, U.S. EPA’s City of Alma SEP Project Coordinator, by telephone no later than five (5) Working Days after TPI or the SGP Defendant(s) knew that the event might cause a delay. Within fifteen (15) Working Days thereafter, TPI or the

SGP Defendant(s) shall provide in writing to U.S. EPA an explanation and a 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; TPI or the SGP Defendant(s)' rationale for attributing the delay to a force majeure event, or other event as set forth in Paragraphs 35 or 66, if TPI or the SGP Defendant(s) intends to assert such a claim. TPI or the SGP Defendant(s) shall include with any notice documentation supporting its claim that the delay is attributable to a force majeure event or other event as set forth in Paragraphs 35 or 66. Except as specifically provided in Paragraphs 26, 32, 35, 60, and 66, failure to comply with the notice provisions of this Paragraph shall constitute a waiver of TPI's or the SGP Defendant(s)' right to assert a force majeure claim with regard to such event. Notification of any delay, in and of itself, shall not extend the time allowed for meeting any requirement or excuse the delay or payment of stipulated penalties. TPI and/or the SGP Defendant(s) shall take all reasonable actions to prevent or minimize any delay.

115. If U.S. EPA determines that the event constitutes a force majeure (or, with respect to Sections VI or VII, that the event otherwise excuses compliance with approved schedules of implementation or deadlines set forth in: (i) Section VI; (ii) any approved plan or report under Section VI; or (iii) the U.S. EPA-approved contract required by Section VII), the deadlines for completion of the obligation affected by the event shall be extended for a period of time equal to the delay resulting from such circumstances. This shall be accomplished by written approval by U.S. EPA. Such an extension does not alter the schedule for performance or completion of the obligations not affected by the force majeure event.

116. In the event that U.S. EPA and TPI or the SGP Defendant(s) cannot agree that any delay or failure has been caused by an event that constitutes a force majeure (or, with respect to Sections VI and VII, that the event excuses compliance with approved schedules of implementation or deadlines set forth in: (i) Section VI; (ii) any approved plan or report under Section VI; or (iii) the U.S. EPA-approved contract required by Section VII), or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with Section XVII of this Decree. In any such dispute resolution proceeding, TPI and/or the SGP Defendant(s) shall have the burden of demonstrating that the delay has been caused by a force majeure event (or, with respect to Section VI and VII of this Decree, another event as set forth in Paragraphs 35 and 66), 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, where applicable, TPI and/or the SGP Defendant(s) complied with Paragraphs 113 and 114.

117. TPI and the SGP Defendants must comply with each applicable requirement of this Decree. Compliance with any requirement of this Decree shall not excuse noncompliance with any other requirement.

XVII. DISPUTE RESOLUTION

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

119. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless

it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends a written Notice of Dispute to the other party. Such Notice shall set forth the issue in dispute, the outcome the party believes is appropriate, and the basis for the party's position. The United States shall send any such Notice to persons identified by TPI and the SGP Defendants in Section XVIII of the Decree. TPI and the SGP Defendant(s) shall send any such Notice to the Office of Regional Counsel of Region 5 of U.S. EPA, to the Department of Justice as provided for in Section XVIII of this Decree, and if applicable, to U.S. EPA's Sediment Remediation Project Coordinator or U.S. EPA's City of Alma SEP Project Coordinator.

120. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, TPI or the SGP Defendant(s) shall, within thirty (30) days after the conclusion of informal negotiations, either accept the position advanced by U.S. EPA or invoke the formal dispute resolution procedures of this Paragraph. Such formal procedures shall commence when TPI and/or the SGP Defendant(s) sends to the Office of Regional Counsel of Region 5 of U.S. EPA, and the Department of Justice, as provided for in Section XVIII of this Decree, a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position, any supporting documentation relied upon by TPI or the SGP Defendants, and any actions which TPI or the SGP Defendant(s) considers necessary to resolve the dispute.

121. Formal dispute resolution shall not exceed thirty (30) days after U.S. EPA's receipt of TPI's or the SGP Defendant(s)'s Statement of Position, unless the time limit is modified by written agreement of the parties. This thirty (30) day period shall include the opportunity for representatives of TPI and/or the SGP Defendant(s) to confer with representatives of Region 5 of

it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends a written Notice of Dispute to the other party. Such Notice shall set forth the issue in dispute, the outcome the party believes is appropriate, and the basis for the party's position. The United States shall send any such Notice to persons identified by TPI and the SGP Defendants in Section XVIII of the Decree. TPI and the SGP Defendant(s) shall send any such Notice to the Office of Regional Counsel of Region 5 of U.S. EPA, to the Department of Justice as provided for in Section XVIII of this Decree, and if applicable, to U.S. EPA's Sediment Remediation Project Coordinator or U.S. EPA's City of Alma SEP Project Coordinator.

120. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, TPI or the SGP Defendant(s) shall, within thirty (30) days after the conclusion of informal negotiations, either accept the position advanced by U.S. EPA or invoke the formal dispute resolution procedures of this Paragraph. Such formal procedures shall commence when TPI and/or the SGP Defendant(s) sends to the Office of Regional Counsel of Region 5 of U.S. EPA, and the Department of Justice, as provided for in Section XVIII of this Decree, a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position, any supporting documentation relied upon by TPI or the SGP Defendants, and any actions which TPI or the SGP Defendant(s) considers necessary to resolve the dispute.

121. Formal dispute resolution shall not exceed thirty (30) days after U.S. EPA's receipt of TPI's or the SGP Defendant(s)'s Statement of Position, unless the time limit is modified by written agreement of the parties. This thirty (30) day period shall include the opportunity for representatives of TPI and/or the SGP Defendant(s) to confer with representatives of Region 5 of

U.S. EPA. If, on or before the conclusion of this thirty (30) day period (or any agreed-upon extensions thereof), U.S. EPA concurs with TPI's or the SGP Defendant(s)'s position, U.S. EPA shall provide written notice of such concurrence to TPI or the SGP Defendant(s). If U.S. EPA does not concur with TPI or the SGP Defendant(s)'s position, U.S. EPA shall so notify TPI and/or the SGP Defendant(s) through a written document which shall set forth the basis of U.S. EPA's position.

122. No later than thirty (30) days after receipt by TPI or the SGP Defendant(s) of U.S. EPA's notice pursuant to Paragraph 121, TPI and/or the SGP Defendant(s) shall notify U.S. EPA whether it agrees to comply with the position advanced by U.S. EPA. If TPI and/or the SGP Defendant(s) do not agree to comply with the position advanced by U.S. EPA, then, within sixty (60) days following receipt by U.S. EPA of TPI's or the SGP Defendant(s)'s notice to U.S. EPA that it does not agree to comply with the position advanced by U.S. EPA, either party may file a petition with the Court seeking a resolution of the dispute. In any such petition, TPI and/or the SGP Defendants shall bear the burden of proof and applicable principles of law with respect to standard of review shall govern.

XVIII. NOTICES AND SUBMISSIONS

123. Notices and submissions required to be made to U.S. EPA's Sediment Remediation Project Coordinator and to U.S. EPA's City of Alma SEP Project Coordinator shall be made in accordance with the provisions in Sections VI and VII. With respect to all other notices and submissions required by this Decree, these notices and submissions shall be made in writing to the United States at the following addresses (unless the United States previously has notified the Defendants in writing of a change in this address list):