

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
)
 Plaintiff,)
)
 v.)
)
 PREMIX, INC.,)
)
 Defendant.)
_____)

Civil Action No.

CONSENT DECREE

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I. INTRODUCTION

WHEREAS, concurrently with this Consent Decree, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“U.S. EPA”), has filed a Complaint in this action against Defendant Premix, Inc. (“Premix” or “Defendant”) pursuant to Section 113 of the Clean Air Act (“Act”), 42 U.S.C. §§ 7413;

WHEREAS, the Complaint alleges, *inter alia*, that during the past five years, the Defendant’s reinforced plastics composite manufacturing plant at Route 20 and Harmon Road in North Kingsville, Ashtabula County, Ohio (the “Facility”) has emitted organic compounds (“OC”) from a thick molding compound (“TMC”) machine and two sheet molding compound (“SMC”) machines in quantities that exceed the hourly and daily limits under the Ohio State Implementation Plan (“Ohio SIP”), and that exceed the emission limits set forth in an air emission permit issued pursuant to Title V of the Act, in violation of Section 502 of the Act, 42 U.S.C. §7661a;

WHEREAS, the Complaint further alleges that (1) Defendant failed to comply with an information request issued by EPA under Section 114 of the CAA, 42 U.S.C. § 7414, by failing to test various emission units in accordance with the EPA information request, and (2) Defendant failed to comply with the requirements in its Title V permit by failing to collect and record operating hours of various emission units;

WHEREAS, Defendant denies the alleged violations asserted in the Complaint, denies any liability to the United States arising out of the transactions or occurrences alleged in the Complaint, and maintains that it is not liable for any civil penalties or injunctive relief.

WHEREAS, without admitting that any such control system is required, Defendant has already installed an Emission Control System at the Facility.

WHEREAS, Defendant consents to the simultaneous filing of the Complaint and lodging of this Consent Decree and agrees to operate the Emission Control System as set forth in this Consent Decree at its Facility;

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

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section II, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), 28 U.S.C. §§ 1331, 1345, and 1355, and over the Parties.

2. Venue lies in this district pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. Solely for purposes of the Complaint, this Decree, and any action to enforce this Decree, Defendant consents to the personal jurisdiction of this Court, and waives any objections and defenses that it may have to the claims set forth in the underlying complaint, the jurisdiction of the Court or to venue in this District.

3. Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. For the purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to the Act.

III. APPLICABILITY

4. As of the Effective Date, the obligations of this Consent Decree apply to and are binding upon the United States and Defendant and their respective successors, assigns, or other entities or persons otherwise bound by law. *See e.g.*, Fed. R. Civ. P. Rule 65(d).

5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Consent Decree are implemented. At least thirty (30) Days prior to transferring, in whole or in part, ownership of, or operational control or controlling interest in the Facility (expressly not including any non-controlling, non-operational shareholder interest or the granting or issuance of any security interest), Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written transfer agreement, to U.S. EPA Region V and the United States Department of Justice in accordance with Section XVI of this Consent Decree (Notices). Any attempt to transfer such ownership or operational control of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

6. Upon entry of this Decree, Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained by Premix to perform

work required under this Consent Decree. Defendant shall condition any such contract entered into after the Effective Date upon performance of the work in conformity with the terms of this Consent Decree. Defendant shall be responsible for ensuring that all work performed by any contractor performing work required by this Consent Decree is in accordance with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree, except as provided in Section IX of this Consent Decree.

IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations authorized by the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Act" shall mean the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*;
- b. "Complaint" shall mean the complaint filed by the United States in this action;
- c. "Compliance Demonstration Report" shall mean the report that Defendant is required to submit to EPA for review and approval in accordance with Paragraph 13.
- d. "Consent Decree" or "Decree" shall mean this Consent Decree and any appendices attached hereto;
- e. "Control System Parameters" shall mean all parameters relating to the operation of the Emission Control System that Defendant must monitor and record to

demonstrate that its Emission Control System continues to operate in compliance with the design criteria set forth in Paragraph 12 of this Decree, including (but not limited to) those Control System Parameters listed in Paragraphs 13.a through 13.d.

f. "Date of Lodging" shall mean the date on which a fully executed Consent Decree is lodged with the Clerk of the United States District Court for the Northern District of Ohio for purposes of allowing the public to comment on it pursuant to Section XXI;

g. "Day" or "Days" shall mean a calendar day or days unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

h. "Defendant" shall mean Premix, Inc;

i. "Effective Date" shall have the definition provided in Section XVII;

j. "Emission Control System" or "ECS" shall mean a system for capturing and controlling OC emissions that includes (1) a Permanent Total Enclosure for each Emitting Unit at the Facility and (2) an RTO;

k. "Emitting Unit" shall mean each of the following: (1) the TMC Machine, (2) the SMC Machine known as P30 Chain SMC Machine and (3) the SMC Machine known as P031 Premi SMC Machine;

l. "Facility" shall mean Defendant's reinforced plastics manufacturing plant located at Route 20 and Harmon Road, North Kingsville, Ohio;

m. "Interest" shall mean interest accruing at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

- n. "Natural Draft Openings" shall mean any permanent opening in a permanent total enclosure that remains open during operation of the Emission Control System and is not connected to a duct in which a fan is installed.
- o. "OC" shall mean "organic compound" as that phrase is used in the Ohio SIP, OAC 3745-31-01 (CCCC).
- p. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and any successor departments or agencies of the State of Ohio;
- q. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral;
- r. "Parties" shall mean the United States and Defendant;
- s. "Permanent Total Enclosure" shall mean an enclosure that permanently surrounds an Emitting Unit for the purpose of capturing and collecting OC emissions and transferring those emissions to an RTO.
- t. "Revised Title V Permit" shall mean the revised permit issued pursuant to the requirements of 42 U.S.C. §§ 7661 – 7661f after receipt of the application Defendant is required to submit pursuant to Paragraph 17.b;
- u. "RTO" shall mean a regenerative thermal oxidizer;
- v. "Section" shall mean a portion of this Decree identified by a Roman numeral;
- w. "SMC Machines" shall mean the sheet molding compound machines currently existing at the Facility which are identified in Defendant's Title V permit dated June 6, 2001 (Permit number 02-04-00-0133) as P30 CHAIN SMC MACHINE and P031 PREMI SMC MACHINE;

x. "State" shall mean the State of Ohio, including the Ohio Attorney General and the Ohio EPA;

y. "Throughput" shall mean the total pounds of styrene consumed in the operation of an Emitting Unit during a specified period.

z. "TMC Machine" shall mean the thick molding compound machine currently existing at the Facility which is identified in Title V permit dated June 6, 2001 (Permit number 02-04-00-0133) as P029 TMC MACHINE;

aa. "United States" shall mean the United States of America, acting on behalf of U.S. EPA; and

bb. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

V. CIVIL PENALTY

9. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$400,000 as a civil penalty, together with Interest accruing from the Date of Lodging through the Date of Payment.

10. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Ohio, Four Seagate, Third Floor, Toledo, Ohio (419-259-6376). At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Premix, Inc., and shall reference the civil action number and DOJ case number 90-5-2-

1-09272, to the United States in accordance with Section XVI of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

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

11. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal, State or local income tax.

VI. COMPLIANCE REQUIREMENTS

A. EMISSION CONTROL SYSTEM INSTALLATION AND DEMONSTRATION

12. Emission Control System Installation. As of the entry of this Consent Decree, Defendant has completed the installation of an Emission Control System (“ECS”) designed to meet the following requirements:

a. The ECS includes a Permanent Total Enclosure for each Emitting Unit designed to meet the total enclosure requirements of U.S. EPA Reference Method 204 in 40 C.F.R. Part 51, Appendix M;

b. The ECS includes an RTO designed to destroy at least 95% of the OC emissions captured from each Emitting Unit, and

c. The ECS is designed to prevent Premix from emitting OC to the atmosphere greater than:

(i) 8 pounds per hour and 40 pounds per day from each Emitting Unit, unless said discharge has been reduced by at least 85 percent, and

(ii) 60 pounds per day and 10.95 tons per year from the combined production and cleanup operations of each Emitting Unit.

13. Compliance Demonstration. As of the entry of this Consent Decree, Defendant

has completed the Performance Test Protocol that it submitted to EPA on September 30, 2009 (“Performance Test Protocol”). By no later than 30 Days after entry of this Consent Decree, Defendant shall submit to U.S. EPA for review and approval a compliance demonstration report (“Compliance Demonstration Report”). The Compliance Demonstration Report shall describe all steps taken to comply with the Performance Test Protocol, the conditions under which the performance test was carried out, and all results of performance testing conducted for the purpose of demonstrating continuing compliance with the design criteria set forth in Paragraph 12. In the Compliance Demonstration Report, based upon the results of the test performed in accordance with the Performance Test Protocol, Defendant shall identify proposed Control System Parameters, including, at a minimum, each of the Control System Parameters listed below in Paragraphs 13.a through 13.c. For each such Control System Parameter, Defendant shall identify a proposed minimum value (or proposed range of values) that Defendant shall meet to assure that the Emission Control System operates in compliance with the design criteria in Paragraph 12. In the event that the Defendant proposes Control System Parameters in addition to those listed below in Paragraphs 13.a through 13.c, Defendant shall also propose a method for measuring and monitoring compliance with each such Control System Parameter.

a. Minimum Temperature of the RTO: Defendant shall maintain an operating temperature inside the RTO that, when measured on a 3-hour rolling average basis, equals or exceeds this Control System Parameter (“Minimum Temperature of the RTO”), which shall be expressed in degrees Fahrenheit;

b. Range of the Pressure Drop at the RTO Inlet: Defendant shall maintain a pressure drop at the RTO that, when measured on a 3-hour rolling average basis, falls on or within this Control System Parameter (“Range of the Pressure Drop at the RTO Inlet”), which

shall be expressed in terms of a minimum and maximum pressure drop;

c. Range of Hertz of the Fan to Maintain Flow to the RTO: With respect to the fan that maintains flow to the RTO, Defendant shall maintain a hertz for the fan motor that, when measured on a 3-hour rolling average basis, falls on or within this Control System Parameter (“Range of Hertz of the Fan to Maintain Flow to the RTO”), which shall be expressed in terms of a minimum and maximum hertz. Defendant shall propose a minimum and maximum hertz based upon operating conditions similar to the operating conditions which were running during the test performed in accordance with the Compliance Demonstration Protocol. To support the proposed minimum and maximum hertz, Defendant shall provide two months of monitoring data pertaining to the hertz for the fan motor starting from the date that Defendant began electronically monitoring such data in June of 2010. In addition, in the Compliance Demonstration Report, Defendant shall provide a written explanation as to why such monitoring data is based upon operating conditions similar to the operating conditions which were running during the test performed in accordance with the Compliance Demonstration Protocol.

B. EMISSION CONTROL SYSTEM OPERATION

14. No later than the date of entry of this Consent Decree, Defendant shall operate the ECS at all times that an Emitting Unit is operating.

15. Defendant shall operate the ECS in compliance with (1) Paragraph 16 below, (2) the design criteria in Paragraph 12 and (3) all Control System Parameters approved by U.S. EPA, or, prior to any such approval, the Control System Parameters proposed by the Defendant in its Compliance Demonstration Report.

16. Good Air Pollution Control Practices.

a. At all times after lodging of this Consent Decree, Defendant shall operate each Emitting Unit, as well as operate the ECS, in a manner consistent with safety and good air pollution control practices in order to minimize OC emissions to the greatest extent possible.

b. Within 60 days of EPA's approval of the Compliance Demonstration Report, Defendant shall submit to U.S. EPA for review and comment a plan setting forth procedures for controlling emissions during the startup, shutdown, or malfunction of the ECS, as well as during the startup, shutdown, or malfunction of any units, including the Emitting Units, that may impact the ability of the ECS to control emissions in accordance with the terms of this Consent Decree.

C. PERMITTING REQUIREMENTS AND POLLUTION CREDITS

17. Applications for a Revised Permit to Install and Revised Title V Permit.

a. By no later than 60 Days following Defendant's receipt of U.S. EPA's full approval of Defendant's Compliance Demonstration Report, Defendant shall apply to Ohio EPA to amend Permit to Install No. 02-1793, which was originally issued to Defendant on May 26, 1999, to require that:

(i) Defendant shall operate the ECS at all times an Emitting Unit is operating;

(ii) Defendant shall operate the ECS in compliance with the design requirements in Paragraph 12, except that if the requirement in Subparagraph 12(c)(ii) is less stringent than one mandated by the Ohio State Implementation Plan ("Ohio SIP") for controlling emissions from clean up materials from facilities with emission control systems, Defendant shall comply with the Ohio SIP requirement in lieu of the requirement in Subparagraph 12(c)(ii);

(iii) Defendant shall comply with the Control System Parameters approved by U.S. EPA in accordance with Section VI.D (Approval of Deliverables), and

(iv) Defendant shall monitor and record its compliance with the Control System Parameters in accordance with the monitoring and recording requirements set forth in Paragraph 23 below.

b. By no later than 60 days after Ohio EPA issues the revised Permit to Install applied for under the preceding subparagraph, Defendant shall apply to Ohio EPA to amend Defendant's pending Title V permit renewal application for the Facility (if its renewal application remains pending at that point) or to amend its Title V permit for the Facility (if its Title V permit has been issued at that point) to include the same requirements that were added to Defendant's Permit to Install pursuant to the preceding subparagraph.

c. In the applications required under Subparagraph 17.a and 17.b, Defendant shall include a copy of the fully approved Compliance Demonstration Report.

d. Any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of the Permit to Install or the Title V permit, subject to the terms of Section XX (Termination) of this Consent Decree.

18. Prohibition on Use of Compliance Methodology Other than Add-On Controls Required under this Consent Decree. In any application under Paragraph 17 or other relevant air pollution control or emissions permit application for the Facility, after entry of the Consent Decree, Defendant may not petition to comply with the Ohio SIP, OAC 3745-21-07, other than by using the ECS that Defendant is required to install and operate under this Consent Decree.

19. Prohibition on Use of OC Emissions Reductions. Defendant shall neither generate nor use any OC emission reductions resulting from the installation and operation of the ECS required by this Consent Decree as creditable, contemporaneous emissions decreases or emission offset credits in any program under the Clean Air Act, under any similar state of Ohio programs or any state of Ohio emissions reduction market system program. In addition, the OC emission reductions that result from implementing this Consent Decree may not be sold or traded by Defendant. However, nothing in this Paragraph shall be construed to limit Defendant's generation and use of OC emission reductions that are achieved from sources other than the TMC machine and SMC machines, or reductions of any other pollutant at any source. Furthermore, nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by U.S. EPA or the State as creditable contemporaneous emissions decreases for the purpose of attainment demonstrations submitted pursuant to Section 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on national ambient air quality standards ("NAAQS"), prevention of significant deterioration ("PSD") increment, or air quality related values.

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

complete applications and taken all other actions necessary to obtain all such permits or approvals.

D. APPROVAL OF DELIVERABLES

21. After review of the Compliance Demonstration Report required under Paragraph 13, or any other plan, report or other item required to be submitted for approval pursuant to this Consent Decree (but not after reviewing the reports required under Paragraph 24), U.S. EPA shall in writing: a) approve the submission; b) approve the submission, but upon specified conditions necessary to ensure compliance; c) approve the submission in part and disapprove the remainder; or d) disapprove the submission.

22. If a submission is approved pursuant to Paragraph 21.a, Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If a submission is conditionally approved or approved only in part, pursuant to Paragraph 21.b. or 21.c., Defendant shall, upon written direction from U.S. EPA, take all actions required by the approved plan, report, or other item that U.S. EPA determines are technically severable from any disapproved portions, subject to Defendant's right under Section X of this Decree (Dispute Resolution) to dispute only the specified conditions, the disapproved portions, or the determination that approved portions of the submittal are severable from disapproved portions.

a. If a submission is disapproved in whole or in part pursuant to Paragraph 21.c. or 21.d., Defendant shall, subject to Defendant's right to dispute the disapproval under Section X of this Decree (Dispute Resolution), within 45 (forty-five) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan or report, or

disapproved portion thereof, for approval. If a resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding portions of this Paragraph.

b. Any stipulated penalties applicable to an original submission, as provided in Section VIII of this Decree, shall accrue during the 45-Day period or other specified period agreed to by the parties for correction and resubmission, but shall not be payable unless a resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

c. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, U.S. EPA may again require Defendant to correct any deficiencies in accordance with the preceding portions of this Paragraph 22, subject to Defendant's right to invoke Dispute Resolution and the right of U.S. EPA to seek stipulated penalties as provided in the preceding portions of this Paragraph.

VII. MONITORING, RECORDING AND REPORTING REQUIREMENTS

23. Defendant shall take the following actions with respect to monitoring and recording its compliance with the Control System Parameters approved by U.S. EPA under Section VI.D (Approval of Deliverables) or, prior to any such approval, the Control System Parameters proposed by the Defendant in its Compliance Demonstration Report.

a. Continuous Temperature Monitor and Recorder: No later than 30 Days after entry of the Consent Decree, Defendant shall install, operate and maintain a device to continuously monitor and record, on a 3-hour rolling average basis, the RTO chamber temperature in degrees Fahrenheit within the RTO whenever an Emitting Unit is operating.

b. Continuous Monitoring of RTO Fan: No later than 30 Days after entry of the Consent Decree, Defendant shall install, operate and maintain a device to continuously monitor and record the hertz, on a 3-hour rolling average basis, of the fan used to control flow to the RTO whenever an Emitting Unit is operating.

c. Continuous Monitoring of Pressure at RTO Inlet: No later than 30 Days after entry of the Consent Decree, Defendant shall install, operate and maintain a device to continuously monitor and record, on a 3-hour rolling average basis, the pressure drop at the inlet of the RTO whenever an Emitting Unit is operating. In the event the pressure at the inlet, on a 3-hour rolling average basis, is less than or greater than the Control System Parameter established under Paragraph 13.b (“Range of Pressure Drop at the RTO Inlet”) approved by EPA or, prior to such approval, proposed by the Defendant in its Compliance Demonstration Report, the monitoring device shall trigger an alarm.

d. Continuous Monitoring of Other Control System Parameters: In the event that the Defendant’s Compliance Demonstration Report includes Control System Parameters in addition to those listed in Paragraphs 13.a through 13.c, Defendant shall install, operate and maintain a device to continuously monitor and record data relating to each such Control System Parameter, and such device shall be installed and operating no later than 30 Days after the submission of the Compliance Demonstration Report. Defendant shall monitor and record the data for each such Control System Parameter using the methodology and approach approved by EPA or, prior to such approval, proposed by the Defendant in its Compliance Demonstration Report.

e. Monitoring of Permanent Total Enclosure: (1) Daily Inspection: Within thirty minutes of beginning operation of any Emitting Unit, Defendant shall inspect the

Permanent Total Enclosure for that unit to ensure that all access doors and windows that are not Natural Draft Openings are closed, and that the direction of air at each Natural Draft Opening is inward, as shown by streamers, smoke tubes, tracer gases, and/or other air flow monitoring devices. (2) Weekly Inspection: Using a portable air velocity meter or equivalent, Defendant shall perform weekly facial velocity checks at each Natural Draft Opening to each Permanent Total Enclosure to determine if the facial velocity at each opening is maintained at 200 feet per minute or greater. (3) Record-keeping: For each daily and weekly inspection, Defendant shall maintain a record documenting the time and results of the inspection, the results of the inspection and corrective actions taken by Defendant.

f. Operation and Maintenance of Devices: With respect to each device required under this Paragraph 23, the device shall be calibrated, operated and maintained in accordance with the manufacturer's recommendations, instructions and operating manuals. Defendant shall maintain on site a copy of all records relating to the calibration, operation and maintenance of devices in accordance with Section XI.

24. Quarterly Report: Within 30 Days after the end of each calendar-year quarter (*i.e.*, by April 30, July 30, October 30, and January 30) after the Date of Lodging, Defendant shall submit a quarterly report to the U.S. EPA. In the quarterly report, Defendant shall:

- a. Describe the status of permit applications required for construction and operation of the ECS under Paragraphs 17 and 20; and
- b. State whether the ECS operated at all times during the reporting period when an Emitting Unit was also operating. In the event that the ECS did not operate when an Emitting Unit was operating, Defendant shall include the following information with respect to each such event:

- (i) Identify the beginning and end date for when an Emitting Unit operated without the ECS also operating;
 - (ii) Identify the likely cause for why the ECS did not operate;
 - (iii) Explain the corrective measures taken, or to be taken, to restore operation of the ECS, limit OC emissions during the ECS outage, and prevent such an outage from occurring again in the future; and
 - (iv) Identify each Emitting Unit that operated during the ECS outage and, for each such unit, identify the amount of Throughput processed during the ECS outage;
- c. State whether each monitoring/recording device listed under Paragraph 23 operated whenever an Emitting Unit operated, and state whether each such device was properly calibrated, operated and maintained in accordance with the manufacturer's recommendations, instructions and operating manuals. In the event a monitoring/recording device (i) failed to operate when an Emitting Unit operated or (ii) failed to be properly calibrated, operated or maintained in accordance with the manufacturer's recommendations, instructions and operating manuals, the Defendant shall provide the following information with respect to each such event:
- (i) Identify the beginning and end dates of the event;
 - (ii) Identify the monitoring/recording device and explain the likely cause for why it (1) failed to operate or (2) failed to be calibrated, operated or maintained in accordance with the manufacturer's recommendations, instructions and operating manuals; and
 - (iii) Explain the corrective measures taken, or to be taken, to restore operation of the device and ensure that it is calibrated, operated and maintained in accordance with the manufacturer's recommendations, instructions and operating manuals;

d. State whether the Defendant complied with each Control System Parameter approved by EPA or, prior to such approval, complied with each Control System Parameter proposed by the Defendant in its Compliance Demonstration Report. In the event that the Defendant did not comply with a Control System Parameter, Defendant shall provide the following information with respect to each such event:

- (i) Identify the beginning and end dates of the event;
- (ii) Identify the Control System Parameter and the lowest recorded measurement for each Day during the non-compliance;
- (iii) Explain the likely cause for the non-compliance;
- (iv) Explain the corrective measures taken, or to be taken, to restore compliance with the Control System Parameter, limit OC emissions during the period of non-compliance, and ensure that such non-compliance does not occur in the future; and
- (v) Identify each Emitting Unit that operated during the period of non-compliance and, for each such unit, identify Throughput processed during the period of non-compliance;

e. State whether the daily inspections of each Permanent Total Enclosure showed that (1) access doors and windows (not including Natural Draft Openings) were closed during the operation of an Emitting Unit and (2) that the direction of air flow at each Natural Draft Opening was inward. In the event that the inspections showed that (1) an access door or window (not including Natural Draft Openings) was left open on a Permanent Total Enclosure during the operation of an Emitting Unit or (2) that air flow was not moving inward at a Natural Draft Opening, Defendant shall provide the following information with respect to each such event:

- (i) Identify the date of the event;
- (ii) Identify the Emitting Unit and explain the nature of the event, including an estimate of the duration of time of the event;
- (iii) Explain the likely cause of the event; and
- (iv) Explain the corrective measures taken, or to be taken, to correct the problem and ensure that it is not repeated in the future;

f. State whether the weekly inspections of each Permanent Total Enclosure showed that the facial air velocity at each Natural Draft Opening was maintained at 200 feet per minute or greater when each Emitting Unit was operating. In the event that an inspection showed a facial air velocity at a Natural Draft Opening was less than 200 feet per minute when an Emitting Unit was operating, Defendant shall provide the following information with respect to each such event:

- (i) Identify the date of the event;
- (ii) Identify the Emitting Unit involved and state the lowest air facial velocity detected during the event;
- (iii) Explain the likely cause of the decrease in air facial velocity; and
- (iv) Explain the corrective measures taken, or to be taken, to restore facial air velocity to 200 feet per minute (or greater) and ensure that facial air velocity does not drop below this level in the future.

25. Supplement to Quarterly Report: For each failure or non-compliance identified and reported in the Quarterly Report in accordance with Paragraph 24, the Defendant shall submit a supplement to such report in the event that the cause of the failure or the non-compliance cannot be fully explained at the time the report is due. The supplement shall be

submitted no later than 30 Days after Defendant became aware of the failure or the non-compliance.

26. Nothing in this Section relieves Defendant of its obligation to provide the notice required by Section IX of this Consent Decree (Force Majeure).

27. All reports shall be submitted to the persons designated in Section XVI of this Consent Decree (Notices).

28. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

29. Emergency Notification of Threats to Public Health, Welfare of the Environment:
Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendant's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify U.S. EPA and Ohio EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knows of the violation or event. This procedure is in addition to the requirements set forth in preceding paragraphs in this Section.

30. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

VIII. STIPULATED PENALTIES

32. Interest on Late Payments. In the event that any payment required by Section V (Civil Penalty) or this Section is not received when due, Interest shall accrue on the unpaid balance commencing on the date payment was due and continuing through the date of payment.

33. Stipulated Penalties: Defendant shall be liable for stipulated penalties for the amounts set forth below in this Paragraph for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree according to all applicable requirements of this Decree and within the specified time schedules established by this Decree.

a. If Defendant fails to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,500 for each Day that the payment is late.

b. The following stipulated penalties shall accrue per violation per Day for Defendant's failure to operate the ECS whenever an Emitting Unit is operating.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th Day
\$4,000	15th through 30th Day
\$7,000	31st Day and beyond

c. The following stipulated penalties shall accrue per violation per Day for Defendant's failure to comply with the requirements of Paragraphs 23.a (Continuous Temperature Monitor and Recorder), Paragraph 23.b (Continuous Monitoring of RTO fan), Paragraph 23.c (Continuous Monitoring of Pressure at RTO inlet), or Paragraph 23.d (Continuous Monitoring of Other Control System Parameters) whenever an Emitting Unit is operated.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th Day
\$1,000	15th through 30th Day
\$1,500	31st Day and beyond

d. The following stipulated penalties shall accrue per violation per Day for Defendant's failure to comply with Control System Parameters approved by U.S. EPA or, prior to any such approval, Control System Parameters proposed by the Defendant in its Compliance Demonstration Report.

(i) Where the Control System Parameter is expressed as a minimum (e.g. Minimum Temperature of the RTO), and where monitoring data falls below this minimum by a margin that is equal to or less than 10% of the minimum;

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th Day
\$1,000	15th through 30th Day
\$1,500	31st Day and beyond

(ii) Where the Control System Parameter is expressed as a range with a maximum and minimum (e.g., Range of the Pressure Drop at the RTO Inlet), and where the

monitoring data falls outside this range by a margin that is equal to or less than 10% of the minimum;

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th Day
\$1,000	15th through 30th Day
\$1,500	31st Day and beyond

(iii) Where the Control System Parameter is expressed as a minimum (e.g. Minimum Temperature of the RTO), and where monitoring data falls below this minimum by a margin that is greater than 10% of the minimum;

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$1,500	15th through 30th Day
\$2,500	31st Day and beyond

(iv) Where the Control System Parameter is expressed as a range with a maximum and minimum (e.g., Range of the Pressure Drop at the RTO Inlet), and where the monitoring data falls outside this range by a margin that is greater than 10% of the minimum.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$1,500	15th through 30th Day
\$2,500	31st Day and beyond

e. The following stipulated penalties shall accrue per violation per Day for Defendant's failure to comply with the requirements of Paragraph 16 (Good Air Pollution Control Practices).

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$750	15th through 30th Day
\$1,000	31st Day and beyond

f. The following stipulated penalties shall accrue per violation per Day for Defendant's failure to comply with the requirements of Paragraph 23.e (Monitoring of Permanent Total Enclosure).

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$750	15th through 30th Day
\$1,000	31st Day and beyond

g. The following stipulated penalties shall accrue per violation per Day if monitoring of the of the Permanent Total Enclosure demonstrates that:

i. An access door or window that is not a Natural Draft Opening was open at the time of daily inspection;

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$300	1st through 14th Day
\$500	15th through 30th Day
\$750	31st Day and beyond

ii. The direction of air flow at each Natural Draft Opening was not inward;

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1,000	15th through 30th Day
\$2,000	31st Day and beyond

iii. The facial velocity at each Natural Draft Opening is less than 200 feet per minute or greater.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th Day
\$1,000	15th through 30th Day
\$1,250	31st Day and beyond

h. The following stipulated penalties shall accrue per violation per Day for Defendant's failure to comply with the permitting requirements under Subsection VI.C.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$750	15th through 30th Day
\$1,000	31st Day and beyond

i. The following stipulated penalties per violation per Day for Defendant's failure to submit a timely and complete Compliance Demonstration Report in accordance with Paragraph 13.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$750	15th through 30th Day
\$1,000	31st Day and beyond

j. The following stipulated penalties shall accrue per violation per Day for Defendant's failure to comply with the emergency notification requirements under Paragraph 29.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$750	15th through 30th Day
\$1,000	31st Day and beyond

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

35. Defendant shall pay stipulated penalties to the United States within 30 Days of a written demand by Plaintiff, subject to Defendant's right to seek Dispute Resolution. Plaintiff may, in the unreviewable exercise of its discretion, reduce or waive in writing stipulated penalties otherwise due it under this Consent Decree.

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

a. If the dispute is resolved by agreement or by a decision of U.S. EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with Interest, to the United States within 30 Days of the effective date of the agreement or the receipt of U.S. EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing,

together with Interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, if any, together with Interest, within 15 Days of receiving the final appellate court decision.

37. Defendant shall make payment of any stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violations the penalties are being paid.

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

39. Subject to the provisions of Section XIV of this Consent Decree (Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Air Act, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

40. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of

Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree. For the purposes of this Section, any act or omission of a director, officer or employee of Defendant is not beyond the control of Defendant.

41. 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, Defendant shall provide notice orally or by electronic or facsimile transmission to U.S. EPA, within 72 hours of when Defendant first knows that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to U.S. EPA and Ohio EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any

circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

42. If U.S. EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. U.S. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

43. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, U.S. EPA will notify Defendant in writing of its decision.

44. If Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 Days after receipt of U.S. EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 40 and 41 above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to U.S. EPA and the Court.

X. DISPUTE RESOLUTION

45. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes

arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

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

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

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

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

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

51. Standard of Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 47, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

52. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 36. If

Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

53. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants at the Facility for purposes of determining compliance with this Consent Decree;
- d. obtain documentary evidence, including photographs and similar data relevant to Defendant's performance under this Consent Decree; and
- e. assess Defendant's compliance with this Consent Decree.

54. Upon request, Defendant shall provide U.S. EPA or its authorized representatives, splits of any samples taken by Defendant for purposes of complying with this Consent Decree. Upon request, U.S. EPA shall provide Defendant splits of any samples taken by U.S. EPA and the State related to compliance with this Consent Decree.

55. Until five years after the termination of this Consent Decree pursuant to Section XX, Defendant shall retain, and shall instruct its contractors and agents that perform work on Defendant's behalf to comply with this Decree to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in

electronic form) in its or such contractors' or agents' possession or control, or that come into its or such contractors' or agents' possession or control, and that relate in any substantive manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph, subject to Defendant's assertion of privilege pursuant to Paragraph 57.

56. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States and the State at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, Defendant shall deliver any such documents, records, or other information to U.S. EPA or the State, subject to Defendant's assertion of privilege pursuant to Paragraph 57.

57. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created or generated to comply with the requirements of this Consent Decree (not

including drafts of any such documents, records or other information) shall be withheld on grounds of privilege.

58. Defendant may also assert that information required to be provided to the United States under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

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

XII. COMPLIANCE WITH OTHER LEGAL REQUIREMENTS

60. The Defendant shall perform all actions required pursuant to this Consent Decree in accordance with all applicable local, state, and federal laws and regulations. The Defendant shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations in a timely manner so as not to delay the work required by this Consent Decree.

61. The United States does not by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant’s compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act or State law and regulations. Notwithstanding the United States’ review and approval of any documents submitted by Defendant pursuant to this Consent Decree, Defendant shall remain solely responsible for compliance with the terms of the Act and this Consent Decree.

XIII. EFFECT OF SETTLEMENT

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

XIV. RESERVATION OF RIGHTS

63. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Section XIII. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or its implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Section XIII. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

64. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 62.

65. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations,

and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein.

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

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

XV. COSTS

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

XVI. NOTICES

69. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
PHB Mailroom 2121
601 D Street, N.W.
Washington, D.C. 20004
Re: DOJ No. 90-5-2-1-09272

and

Compliance Tracker
U.S. Environmental Protection Agency, Region 5 (AE-17J)
77 West Jackson Blvd.
Chicago, IL 60604

To U.S. EPA:

Michael R. Berman
U.S. Environmental Protection Agency, Region 5 (C-14J)
77 West Jackson Blvd.
Chicago, IL 60604-3590
(312) 886-6837

and

Sheila Desai
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590
(312) 353-4150
fax (312) 353-8289

To Defendant:

President
Premix, Inc.
P.O. Box 281
Route 20 & Harmon Road
North Kingsville, OH 44068
(440) 224-2181
Fax: (440) 224-2766

with copies to:

Michael S. McCauley, Premix Attorney
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497
(414) 277-5525
Fax: (414) 978-8925

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

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

XVII. EFFECTIVE DATE

72. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket after completion of the period of public notice and comment required by Section XXI; provided, however, that Defendant hereby agrees that it shall be bound to perform duties scheduled to occur before the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall be null, ineffective and void.

XVIII. RETENTION OF JURISDICTION

73. The Court shall retain jurisdiction over this case until final termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XIX, or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

74. Non-material modifications to this Consent Decree shall be in writing and shall be effective when signed by the United States and the Defendant. The United States will file non-material modifications with the Court. Material modifications shall be in writing and signed by all Parties, and shall be effective only upon approval by the Court. Nothing in this Consent

Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

75. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 52, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XX. TERMINATION

76. After Defendant has completed the requirements of Section VI (Compliance Requirements) of this Decree, has maintained satisfactory compliance with the requirements of this Consent Decree for any continuous two-year period commencing from the startup of the RTO in September of 2009, has received a new or amended Title V permit based upon the application submitted by Defendant pursuant to Paragraph 17.b, has complied with all other requirements of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

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

78. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section X of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 47 of Section X (Dispute Resolution), until 90 Days after service of its Request for Termination.

79. Notwithstanding the preceding Paragraphs of this Section, if enforcement of a provision in this Consent Decree cannot be pursued by the United States under a new or amended Title V permit, or if a Consent Decree requirement was intended to be part of a Title V Permit and did not become or remain part of such permit, then such requirement may be enforced under the terms of this Consent Decree at any time.

XXI. PUBLIC PARTICIPATION

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

81. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXII. SERVICE

82. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and, for such matters, to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons and Complaint. The Parties agree that Defendant need not file an answer to the Complaint unless or until the Court expressly declines to enter this Consent Decree.

XXIII. SIGNATORIES

83. Each undersigned representative of the Defendant and the undersigned delegate of the United States Attorney General certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

84. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

XXIV. INTEGRATION

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

XXV. FINAL JUDGMENT

86. Upon approval and entry of this Consent Decree by the Court in the matter of *United States v. Premix, Inc. (N.D. Ohio)*, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58. Dated and entered this 22 day of September, 2010.

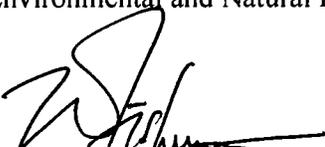
/s/Dan Aaron Polster
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Premix, Inc.* (N.D.Ohio).

FOR PLAINTIFF THE UNITED STATES OF AMERICA

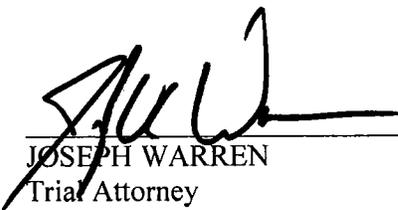
IGNACIA S. MORENO
Assistant Attorney General
Environmental and Natural Resources Division

Date: 7/23/10



W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement
Environmental and Natural Resources Division

Date: 8/6/10

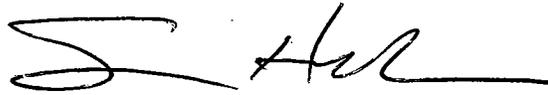


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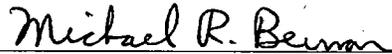
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Date: June 11, 2010



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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Premix, Inc.* (N.D. Ohio).

FOR DEFENDANT PREMIX, INC.

Date: 4/30/10



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