United States District Court
Northern District of Illinois
Eastern Division

USA, et al

v.

CLEAN HARBORS SERVICES INC., et al

JUDGMENT IN A CIVIL CASE

Case Number: 05 C 5234

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

☐ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED Government's motion for entry of Consent Decree [7] is granted. Enter Consent Decree. Enter Final Judgment. Case terminated.

90-5-2-1-06949

Michael W. Dobbins, Clerk of Court

Date: 11/15/2005

/s/ Marjorie A. King, Deputy Clerk

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James F. Holderman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	05 C 5234	DATE	11/15/2005
CASE TITLE	USA, et al vs. CLEAN HARBORS SERVICES, INC., et al		

DOCKET ENTRY TEXT:

Government's motion for entry of Consent Decree [7] is granted. Enter Consent Decree. Enter Final Judgment. Case terminated.

■ [For further detail see attached order.]

Docketing to mail notices.
*Mail AO 450 form.

Courtroom Deputy Initials:	mak

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES of AMERICA, STATE OF ILLINOIS, STATE OF LOUISIANA, Plaintiffs, v. CLEAN HARBORS SERVICES, INC., SPRING GROVE RESOURCE RECOVERY, INC., CLEAN HARBORS OF BRAINTREE, INC., CLEAN HARBORS OF CONNECTICUT, INC., CLEAN HARBORS BATON ROUGE, LLC, CLEAN HARBORS PLAQUEMINE, LLC, CLEAN HARBORS LA PORTE, L.P., CLEAN HARBORS DEER PARK, L.P., CLEAN HARBORS ENVIRONMENTAL SERVICES, INC., CLEAN HARBORS ARAGONITE, LLC, Defendants.	))))))))))))))))))))	No. 05 C 5234 Judge Holderman

CONSENT DECREE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE UNITED STATES of AMERICA,	)	
STATE OF ILLINOIS,	)	
STATE OF LOUISIANA,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**No.**
	)	
CLEAN HARBORS SERVICES, INC.,	)	**Judge**
SPRING GROVE RESOURCE RECOVERY, INC.,	)	
CLEAN HARBORS OF BRAINTREE, INC.,	)	
CLEAN HARBORS OF CONNECTICUT, INC.,	)	
CLEAN HARBORS BATON ROUGE, LLC,	)	
CLEAN HARBORS PLAQUEMINE, LLC,	)	
CLEAN HARBORS LA PORTE, L.P.,	)	
CLEAN HARBORS DEER PARK, L.P.,	)	
CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.,	)	
CLEAN HARBORS ARAGONITE, LLC	)	
	)	
Defendants.	)	

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), Co-Plaintiff the State of Illinois ("Illinois"), on behalf of the Illinois Environmental Protection Agency (IEPA"), and Co-Plaintiff the State of Louisiana ("Louisiana"), on behalf of the Louisiana Department of Environmental Quality ("LDEQ"), filed a Complaint simultaneously with this Consent Decree against Defendants Clean Harbors Services, Inc.; Spring Grove Resource Recovery, Inc.; Clean Harbors of Braintree, Inc.; Clean Harbors of Connecticut, Inc.; Clean Harbors Baton Rouge, LLC; Clean Harbors Plaquemine, LLC; Clean Harbors La Porte, L.P.; Clean Harbors Deer Park, L.P.; Clean Harbors Environmental

Services, Inc.; and Clean Harbors Aragonite, LLC (collectively "Clean Harbors" or "Defendants"), seeking civil penalties and injunctive relief for alleged violations of the National Emissions Standard for Hazardous Air Pollutants for Benzene Waste Operations, 40 C.F.R. Part 61, Subpart FF ("Benzene Waste NESHAP" or "Subpart FF"), promulgated pursuant to Section 112(d) of the Clean Air Act, 42 U.S.C. § 7412(d), at Clean Harbors' facilities located in Chicago, Illinois; Cincinnati, Ohio; Braintree, Massachusetts; Bristol, Connecticut; Baton Rouge, Louisiana; Plaquemine, Louisiana; La Porte, Texas; Deer Park, Texas; Kimball, Nebraska; and Aragonite, Utah (the "Covered Facilities").

WHEREAS, the Complaint alleged that the Covered Facilities, which are hazardous waste treatment, storage, and disposal facilities ("TSDFs"), failed to properly determine their total annual benzene quantity and failed to submit all required information in annual reports due under the Benzene Waste NESHAP;

WHEREAS, the Complaint also alleged that the Clean Harbors facility located in Chicago, Illinois: (1) had a total annual benzene quantity that was equal to or greater than ten megagrams per year (10 Mg/yr) and failed to manage and treat the facility waste pursuant to the requirements of the Benzene Waste NESHAP; and (2) on one occasion, transferred benzene-containing wastes from several containers to another container without proper controls during the transfer and without proper controls on the receiving container;

WHEREAS, for several years, when a generator supplied Clean Harbors with a range of possible benzene concentrations for a particular waste shipment subject to the Benzene Waste NESHAP, Clean Harbors used the mid-point of the "range" in determining the total benzene quantity in that shipment and in calculating its total annual benzene quantity;

WHEREAS, U.S. EPA maintains that the use of the mid-point in a range of possible benzene concentrations does not constitute sufficient "knowledge of the waste" to comply with the requirements of 40 C.F.R. § 61.355(c)(2);

WHEREAS, neither this Consent Decree nor any actions taken hereunder will constitute an admission by Clean Harbors of the occurrence of or of liability for the violations alleged in the Complaint;

WHEREAS, the United States, Illinois, Louisiana, and Clean Harbors (the "Parties") agree to the entry of this Decree without any adjudication or admission of facts or law, except as provided in Paragraph 1;

WHEREAS, the Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345 and 1355(a); and Section 113(b) of the CAA, 42 U.S.C. § 7413(b). Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c), and 1395; and Section 113(b) of the CAA, 42 U.S.C. § 7413(b). The Complaint states a claim upon which relief may be granted for injunctive relief and civil penalties against Clean Harbors. Solely for the purposes of this Consent Decree and the underlying Complaint, Clean Harbors waives all objections and defenses that it may have to the jurisdiction of this Court and to venue in this District. Clean

Harbors consents to and will not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

II. DEFINITIONS

2. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in the Clean Air Act, as amended ("CAA"), 42 U.S.C. §§ 7401 et seq., or the Benzene Waste NESHAP, 40 C.F.R. §§ 61.340-61.359, shall have the meanings contained therein. In addition, the following definitions shall apply to the terms contained within this Consent Decree:

a. "Applicable Co-Plaintiff" shall mean:

(i) As to the Covered Facility located in Chicago, Illinois, the State of Illinois;

(ii) As to the Covered Facilities located in Baton Rouge, Louisiana, and Plaquemine, Louisiana, the State of Louisiana.

b. "Applicable State Agency" shall mean:

(i) As to the Covered Facility located in Chicago, Illinois, the Illinois Environmental Protection Agency ("IEPA");

(ii) As to the Covered Facilities located in Baton Rouge, Louisiana, and Plaquemine, Louisiana, the Louisiana Department of Environmental Quality ("LDEQ").

c. "Applicable U.S. EPA Region" shall mean:

(i) As to the Covered Facilities located in Massachusetts and Connecticut, U.S. EPA Region 1;

(ii) As to the Covered Facilities located in Illinois and Ohio, U.S. EPA Region 5;

(iii) As to the Covered Facilities located in Louisiana and Texas, U.S. EPA Region 6;

(iv) As to the Covered Facility located in Nebraska, U.S. EPA Region 7;

(v) As to the Covered Facility located in Utah, U.S. EPA Region 8.

d. "Calendar Quarter" shall mean a 3-month period ending on March 31, June 30, September 30 or December 31.

e. "Chicago Facility" shall mean the hazardous waste treatment, storage, and disposal facility that Clean Harbors Services, Inc. owns and/or operates located at 11800 South Stony Island Avenue, Chicago, Illinois 60617.

f. "Clean Harbors" shall mean, collectively, Clean Harbors Services, Inc.; Spring Grove Resource Recovery, Inc.; Clean Harbors of Braintree, Inc.; Clean Harbors of Connecticut, Inc.; Clean Harbors Baton Rouge, LLC; Clean Harbors Plaquemine, LLC; Clean Harbors La Porte, L.P.; Clean Harbors Deer Park, L.P.; Clean Harbors Environmental Services, Inc.; and Clean Harbors Aragonite, LLC; and their successors and assigns.

g. "Consent Decree" or "Decree" shall mean this Consent Decree, all attachments hereto, and all modifications.

h. "Covered Facilities" shall mean the facilities that are covered under the requirements of this Decree. Those facilities are as follows:

(i) Chicago Facility, 11800 South Stony Island Avenue, Chicago, IL 60617 (TSDF); owned and operated by Clean Harbors Services, Inc.;

(ii) Cincinnati (Spring Grove) Facility, 4879 Spring Grove Avenue, Cincinnati, OH 45232 (TSDF); owned and operated by Spring Grove Resource Recovery , Inc;

(iii) Braintree Facility, 1 Hill Ave., Braintree, MA 02184 (TSDF); owned and operated by Clean Harbors of Braintree, Inc.;

(iv) Connecticut (CTC) Facility, 761 Middle St., Bristol, CT 06010 (TSDF); owned and operated by Clean Harbors of Connecticut, Inc.;

(v) Baton Rouge Facility, 13351 Scenic Highway, Baton Rouge, LA 70807 (Wastewater Treatment Facility); owned and operated by Clean Harbors Baton Rouge, LLC;

(vi) Plaquemine Facility, 32655 Gracie Lane, Plaquemine, LA 70764 (Deep Injection Well Facility); owned and operated by Clean Harbors Plaquemine, LLC;

(vii) LaPorte Facility, 500 Battleground Road, La Porte, TX 77571 (TSDF); owned and operated by Clean Harbors La Porte, L.P.;

(viii) Deer Park Facility, 2027 Battleground Road, Deer Park, TX 77536 (Incinerator Facility); owned and operated by Clean Harbors Deer Park, L.P.;

(ix) Kimball Facility, 2247 South Highway 71, Kimball, NE 69145 (Incinerator Facility); owned and operated by Clean Harbors Environmental Services, Inc.; and

(x) Aragonite Facility, 11600 North Aptus Road, Aragonite, UT 84029 (Incinerator Facility); owned and operated by Clean Harbors Aragonite, LLC.

i. "Date of Entry of this Consent Decree" or "Date of Entry" shall mean the date this Consent Decree is entered by the United States District Court for the Northern District of Illinois.

j. "Date of Lodging of this Consent Decree" or "Date of Lodging" shall mean the date the United States files a Motion to lodge this Consent Decree in the United States District Court for the Northern District of Illinois.

k. "Day" or "day" shall mean a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday, or federal holiday. 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 Working Day.

l. "Defendants" shall mean Clean Harbors Services, Inc., Spring Grove Resource Recovery, Inc., Clean Harbors of Braintree, Inc., Clean Harbors of Connecticut, Inc., Clean Harbors Baton Rouge, LLC, Clean Harbors Plaquemine, LLC, Clean Harbors La Porte, L.P., Clean Harbors Deer Park, L.P., Clean Harbors Environmental Services, Inc., and Clean Harbors Aragonite, LLC.

m. "IEPA" shall mean the Illinois Environmental Protection Agency and any applicable successor departments or agencies of the State of Illinois.

n. "LDEQ" shall mean the Louisiana Department of Environmental Quality and any applicable successor departments or agencies of the State of Louisiana.

o. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral. "Subparagraph" shall mean a portion of a Paragraph identified by lower case letters and any subdivisions thereof.

p. "Parties" shall mean the United States, Illinois, Louisiana, and the Defendants.

q. "Section" shall mean a portion of this Consent Decree identified by a roman numeral. "Subsection" shall mean a portion of a Section identified by upper case letters.

r. "TAB report" shall mean the total annual benzene report due annually pursuant to 40 C.F.R. § 61.357.

s. "TSDF" shall mean a hazardous waste treatment, storage, and disposal facility.

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

III. APPLICABILITY AND BINDING EFFECT

3. This Consent Decree will apply to and be binding upon the United States, on behalf of U.S. EPA, the State of Illinois, on behalf of IEPA, and State of Louisiana, on behalf of LDEQ, and

upon Defendants, their successors and assigns, and their officers, directors, and employees in their representative capacities as such, and all other persons and entities as provided for in Fed. R. Civ. P. 65(d). In any action to enforce this Decree, Defendants will not raise as a defense the failure of their officers, directors, agents, servants, contractors, employees or any other persons or entities provided for in Fed. R. Civ. P. 65(d) to take any actions necessary to comply with the provisions hereof except to the extent provided in Section X ("Force Majeure").

4. No change in ownership or corporate status relating to Defendants including, but not limited to, any transfer of assets or real or personal property, will in any way alter Defendants' responsibilities under this Consent Decree, or the responsibilities of any successor or assignee of Defendants.

5. Until termination of this Decree, Defendants will give written notice and a copy of this Consent Decree to any successors in interest at least thirty (30) days prior to the transfer or conveyance of ownership, title to, easement, operation of, or other interest in any one of the Covered Facilities. Defendants will require that, in the event of any transfer or conveyance, in whole or in part, of ownership of, operation of, or other ownership or operating interest in any one of the Covered Facilities, the transferee agrees to assume the obligations and liabilities of this Decree. Any deed, title, leasehold, or other instrument by which any Defendant transfers or conveys control or operation of any one of the Covered Facilities, or any ownership or operating interest in any one of the Covered Facilities, will contain a notice that the interest being transferred or conveyed is subject to the requirements of this Consent Decree, and will set forth the case caption, the civil action number, and the Court having jurisdiction.

6. Simultaneously with providing the notice required in the first sentence of Paragraph 5, Defendants will provide written notice of such transfer or conveyance to each person or entity of the

United States, Illinois, and Louisiana, as specified in Section XIII ("Notices and Submissions"). In the event of any such transfer or conveyance of ownership or other interest in any one of the Facilities, Defendants will not be released from the obligations or liabilities of this Consent Decree unless the transferee has the financial and technical ability to assume and has entered into an agreement with the United States to assume these obligations and liabilities, and the Court has approved the release and transfer of said obligations or liabilities.

IV. COMPLIANCE MEASURES

A. COMPLIANCE WITH 40 C.F.R § 61.355

7. By no later than the Date of Lodging of this Consent Decree, for each of the Covered Facilities, Clean Harbors will determine, in accordance with the procedures of 40 C.F.R. § 61.355, the total annual benzene ("TAB") quantity in benzene-containing wastes received from generators that are subject to the Benzene Waste NESHAP.

8. Measuring at the Point of Waste Generation. By no later than the Date of Lodging, Clean Harbors will determine the annual waste quantity of each benzene-containing waste stream subject to the Benzene Waste NESHAP and the flow-weighted annual average benzene concentration of each such waste stream at the point of waste generation, which, for each of the Covered Facilities, is the point where the waste enters each of the Covered Facilities, pursuant to 40 C.F.R. §§ 61.355(b)(3) and 61.355(c)(1)(i)(C). To the extent that Clean Harbors ships benzene-containing waste subject to the Benzene Waste NESHAP from one of its Covered Facilities to another, each Covered Facility that the waste enters will include the total benzene quantity in the waste in the Covered Facility's TAB calculation.

9. Determining the Flow-Weighted Annual Average Benzene Concentration – In General. By no later than April 7, 2006, Clean Harbors will determine the flow-weighted annual

average benzene concentration for each benzene-containing waste stream subject to the Benzene Waste NESHAP in a manner that complies with the requirements of 40 C.F.R. § 61.355(c) and Paragraph 10 below, by using one of the following two methods:

(i) "knowledge of the waste" in accordance with: (a) the requirements of 40 C.F.R. § 61.355(c)(2); and (b) the requirements and prohibitions of Paragraph 10 below; or

(ii) measuring the benzene concentration in the waste stream in accordance with the procedures of 40 C.F.R. § 61.355(c)(3).

10. Determining the Flow-Weighted Annual Average Benzene Concentration – Relying upon the Benzene Concentration Supplied by a Generator.

a. Information and Certifications Required in Order to Rely upon the Benzene Concentration Supplied by a Generator. If Clean Harbors chooses to rely upon the benzene concentration that a generator supplies (such as the concentration listed on a generic form known as a "Waste Material Profile Sheet"), Clean Harbors must require the generator to provide no less than the following information and certification for each benzene-containing waste stream subject to the Benzene Waste NESHAP:

(i) whether the basis for the benzene concentration that the generator lists is (a) knowledge of the waste; or (b) test data;

(ii) if the generator states that "knowledge of the waste" is the basis for the concentration, a description of the knowledge that the generator relies upon in making this claim;

(iii) if the generator states that "test data" is the basis for the concentration, an identification of the date of the sampling data that supports the listed concentration;

(iv) whether the process that generated the benzene-containing waste stream has materially changed since the time of the "knowledge of the waste" or the test data that the generator is relying upon; and

(v) if the generator identifies a "range" of benzene concentrations for the waste stream, a certification that the actual benzene concentration in the waste stream being shipped is not greater than the maximum of the range listed.

The information relating to benzene-containing wastes subject to the Benzene Waste NESHAP that Clean Harbors requires of a generator on a generic form must be placed in a location on the form separate from all other information and must be separately certified as true, accurate, and complete.

b. Range of Benzene Concentrations. If Clean Harbors permits a generator to provide a "range" of benzene concentrations for any shipments of benzene-containing waste streams subject to the Benzene Waste NESHAP, Clean Harbors is prohibited from using the mid-point of the range as the benzene concentration for purposes of calculating a Covered Facility's TAB. Clean Harbors may use the maximum of the range if Clean Harbors requires the generator to certify that the actual benzene concentration of the waste stream being shipped does not exceed the maximum of the range, as set forth in Paragraph 10.a.(v) above. For any waste stream for which Clean Harbors uses the maximum of the range of benzene concentrations as the flow-weighted annual average benzene concentration, Clean Harbors will indicate that it is doing so in a footnote in its annual TAB report required pursuant to 40 C.F.R. § 61.357(c).

c. Updating the Material Waste Profile Sheet. If Clean Harbors chooses to secure the information required by Paragraph 10.a through a revision to its Waste Material Profile Sheet ("WMPS"), then by no later than November 1, 2005, Clean Harbors will submit to U.S. EPA Region 5 a proposed revision of the WMPS that meets the requirements of Paragraph 10.a. Clean Harbors may seek up to two additional months to submit the revised WMPS if Clean Harbors provides a reasonable explanation for missing the November 1, 2005 deadline. If U.S. EPA provides comments within 45 days of receipt of the revised WMPS, Clean Harbors will submit, within 30 days of receipt of U.S. EPA's comments, a revised WMPS that responds to the comments. If

U.S. EPA does not provide comments on the WMPS within 45 days of receipt, Clean Harbors may proceed with the use of the revised WMPS as submitted.

d. Disagreements Regarding the Flow-Weighted Annual Average Benzene Quantity Based on "Knowledge of the Waste." Pursuant to 40 C.F.R. § 61.355(c)(2), if Clean Harbors and U.S. EPA disagree on the determination of the flow-weighted annual average benzene concentration based on knowledge of the waste, Clean Harbors must implement the sampling procedures set forth in 40 C.F.R. § 61.355(c)(3).

11. Sampling Program.

a. Facilities Subject to the Requirements of this Paragraph.

i. This Paragraph applies to each Covered Facility that has a TAB equal to or greater than 1.0 Megagram ("Mg") per year, but does not have controls sufficient to meet the control requirements 40 C.F.R. §§ 61.342(c), (d), or (e); provided however, that if a Covered Facility is a deep injection well facility, that Facility will be exempt from this Paragraph if the Facility has Subpart FF-equivalent controls up to the point at which the benzene-containing waste stream that is subject to the Benzene Waste NESHAP is injected into the deep well.

ii. By no later than September 30, 2005, and on each September 30th until the termination of this Decree, for each Covered Facility that Clean Harbors determines is exempt from this Paragraph, Clean Harbors will submit to U.S. EPA Region 5, each Applicable U.S. EPA Region, and the Applicable State Agency information sufficient to demonstrate the Facility's exemption. If a Covered Facility is exempt because of a TAB of less than 1.0 Mg, Clean Harbors may demonstrate the exemption by submitting the Covered Facility's annual TAB report for the prior year. If a Covered Facility is otherwise exempt, Clean Harbors must submit information sufficient to

demonstrate that the nature and extent of the controls at the Covered Facility meet the requirements of 40 C.F.R. §§ 61.342(c), (d), or (e).

b. Duration of Sampling Program. The sampling program for each Covered Facility that is subject to the requirements of this Paragraph (a "Paragraph 11 Covered Facility") will commence in calendar year 2006 and will continue each year thereafter until the later of (i) 2008; or (ii) the calendar year in which all of the sampling required by Paragraph 11.d.ii.(b) or (c) has been completed. A Paragraph 11 Covered Facility may be subject to the requirements of this program during one calendar year but not during the previous or following year, depending upon the Facility's TAB and Subpart FF control status (Paragraph 11.a) and/or upon the results of the prior year's sampling events.

c. Waste Streams Subject to Sampling; Definition of a "Sampling Event". A Paragraph 11 Covered Facility must undertake the sampling requirements of this Paragraph on any waste stream that contributed 0.1 Mg or more to that Facility's TAB for the prior year (a "Paragraph 11 Waste Stream"). A sampling event ("Sampling Event") consists of collecting and analyzing three representative samples from a shipment of a Paragraph 11 Waste Stream.

d. Sampling Program for Calendar Year 2006.

i. A Paragraph 11 Covered Facility will undertake the first Sampling Event of calendar year 2006 in the first shipment after January 31, 2006, that contains a Paragraph 11 Waste Stream. If each of the three samples from the first Sampling Event is less than or equal to the concentration that the generator supplied as the maximum concentration (when the generator supplied a range) or as the specific concentration (when the generator supplied a specific number for the concentration), the Paragraph 11 Covered Facility will undertake a second Sampling Event. The second Sampling Event will be undertaken from the second shipment of that waste stream after

January 31, 2006. If the Paragraph 11 Covered Facility does not receive a second shipment in 2006 of the same waste stream, the second Sampling Event will take place with the next such shipment that the Paragraph 11 Covered Facility receives before December 31, 2008. If each of the three samples from the second Sampling Event is less than or equal to the concentration that the generator supplied as the maximum or specific concentration, the Paragraph 11 Covered Facility will not be required to undertake any further Sampling Events for that Paragraph 11 Waste Stream in 2006.

ii. If one or more of the samples that a Paragraph 11 Covered Facility collects and analyzes from either the first or second Sampling Event of 2006 is greater than the concentration that the generator supplied as the maximum or specific concentration for that shipment, Clean Harbors must either:

(a) terminate receipt of waste streams subject to the Benzene Waste NESHAP from that generator; or

(b) require the generator or, if it so chooses, itself, to take three representative samples from that waste stream each time it is shipped in order to determine the benzene concentration; or

(c) require the generator or, if it so chooses, itself, to take three representative samples from at least the next three shipments of that waste stream in order to determine a new, accurate range of concentrations for that waste stream. In order to utilize this option, three additional Sampling Events must take place even if those Sampling Events cannot all be completed in 2006.

e. Sampling Program for Calendar Year 2007.

i. For Facilities that First are Subject to the Requirements of this Paragraph in 2007. For any Covered Facility that first becomes subject to the requirements of Paragraph 11 in calendar year 2007, the sampling program set forth in Paragraph 11.d will apply.

ii. For Facilities that Were Subject to the Sampling Program in 2006. For any Paragraph 11 Covered Facility that was required to and did undertake a sampling program in 2006,

the requirements of Paragraph 11.d will apply in 2007, except that, for any Paragraph 11 Waste Stream that underwent two Sampling Events in 2006 where all six samples were equal to or less than the maximum or specific concentration that the generator supplied, the Paragraph 11 Covered Facility initially will undertake only one Sampling Event for that waste stream. This Sampling Event will take place with the first shipment after January 31, 2007, that the Paragraph 11 Covered Facility receives. If each of the three samples from that first Sampling Event of 2007 is less than or equal to the maximum or specific concentration that the generator supplied for that shipment, then the Paragraph 11 Covered Facility will not be required to undertake any further Sampling Events for that waste stream in 2007. If one or more of the samples that the Paragraph 11 Covered Facility collects and analyzes from that first Sampling Event of 2007 is greater than the concentration that the generator supplied as the maximum or specific concentration for that shipment, Clean Harbors will comply with the requirements of Paragraph 11.d.ii.

f. Sampling Program for Calendar Year 2008.

i. For Facilities that "Skipped" 2007 or that First are Subject to the Requirements of this Paragraph in 2008. For any Covered Facility that undertook a sampling program in 2006 but did not have to do so in 2007, or for any Covered Facility that first becomes subject to the requirements of Paragraph 11 in calendar year 2008, the sampling program set forth in Paragraph 11.d will apply.

ii. For Facilities that Were Subject to the Sampling Program in 2007 or in both 2006 and 2007. For any Paragraph 11 Covered Facility that was required to and did undertake a sampling program in 2007 or in both 2006 and 2007, the requirements of Paragraph 11.d will apply in 2008, except that, for any Paragraph 11 Waste Stream that underwent either (a) two Sampling Events in 2007; or (b) two Sampling Events in 2006 and one Sampling Event in 2007, where all of

the samples were equal to or less than the maximum or specific concentration that the generator supplied, the Paragraph 11 Covered Facility initially will undertake only one Sampling Event for that waste stream. This Sampling Event will take place with the first shipment after January 31, 2008, that the Paragraph 11 Covered Facility receives. If each of the three samples from that first Sampling Event of 2008 is less than or equal to the maximum or specific concentration that the generator supplied for that shipment, then the Paragraph 11 Covered Facility will not be required to undertake any further Sampling Events for that waste stream in 2008. If one or more of the samples that the Paragraph 11 Covered Facility collects and analyzes from that first Sampling Event of 2008 is greater than the concentration that the generator supplied as the maximum or specific concentration for that shipment, Clean Harbors will comply with the requirements of Paragraph 11.d.ii.

g. Sampling Program after 2008. A Paragraph 11 Covered Facility will be required to undertake sampling of a Paragraph 11 Waste Stream after December 31, 2008, only on waste streams for which an accurate specific or maximum benzene concentration still has not been determined as required by Paragraphs 11.d.ii, 11.e.ii, or 11.f.ii. Clean Harbors may seek to terminate the Consent Decree before complying with any sampling that is required after December 31, 2008, only if Clean Harbors certifies that it permanently will redirect that waste stream for incineration at one of its Covered Facilities that has an incinerator.

h. TAB Reporting. For purposes of reporting a Covered Facility's TAB for a particular calendar year, Clean Harbors may utilize the average benzene concentration of a particular Sampling Event only when reporting the benzene concentration for the particular shipment that was sampled. Clean Harbors may never rely upon an average benzene concentration of a prior Sampling Event for any other shipments of the same waste stream.

12. Adequate Personnel and Training at the Covered Facilities. By no later than November 1, 2005, Clean Harbors will commence: (i) a study of the personnel capabilities at each Covered Facility to determine whether each Facility has sufficient personnel to review all generator-supplied benzene data and to undertake the requirements of the sampling program in Paragraph 11 (if applicable to that Facility); and (ii) a training program designed to ensure that all personnel that review generator-supplied benzene data and participate in the sampling program of Paragraph 11 are trained to ensure compliance with the requirements of this Consent Decree. Clean Harbors will complete the review of the personnel capabilities and the initial training at all Covered Facilities by no later than June 30, 2006. For the duration of this Consent Decree, Clean Harbors will engage in "refresher" training no later than one year after the initial training.

13. Reports on Compliance with Paragraphs 11 and 12. By no later than January 31, 2007, and continuing annually until January 31, 2009, Clean Harbors will submit a report to U.S. EPA Region 5, each Applicable U.S. EPA Region, and each Applicable State Agency in which the Covered Facilities is located that:

a. describes how the sampling program of Paragraph 11 was implemented, including identifying all waste streams that were sampled; the waste streams (if any) that exceeded the benzene concentrations reported by the generator, including an identification of the concentration(s) reported versus the concentration(s) as sampled; and the actions that Clean Harbors took to ensure compliance with Paragraphs 11.d.ii, 11.e.ii, or 11.f.ii (as applicable).

b. identifies the training that Clean Harbors implemented in the prior calendar year to comply with the requirements of Paragraph 12;

c. certifies that the number of personnel employed to undertake the responsibilities identified in Paragraph 12 is sufficient.

14. Prohibition on Mixing or Diluting a Waste Stream. Clean Harbors will not determine the flow-weighted annual average benzene concentration by taking samples from tanks that contain commingled waste.

B. MANAGING AND TREATING BENZENE WASTES FROM GENERATORS WITH TABS OF 10 MG/YR OR MORE

15. By no later than the Date of Lodging, Clean Harbors will manage and treat, in accordance with the requirements of 40 C.F.R. §§ 61.342(f) and 61.342(c)(1)(i), all benzene wastes shipped to Clean Harbors from a generator whose TAB is equal to or greater than 10 Mg/yr even if the Clean Harbors' Facility has a TAB below 10 Mg/yr.

16. If Clean Harbors receives benzene-containing waste from a generator whose TAB is equal to or greater than 10 Mg/yr but that generator previously had certified to Clean Harbors that its TAB was less than 10 Mg/yr, and if Clean Harbors fails or failed in the past to treat such benzene-containing waste in accordance with the requirements of the Benzene Waste NESHAP, Clean Harbor will notify U.S. EPA in writing within five days of discovering such an occurrence. Clean Harbors will provide U.S. EPA with a copy of the generator's TAB certification, the date(s) of the shipment(s), and the date that Clean Harbors discovered that the generator's TAB was equal to or greater than 10 Mg/yr. Clean Harbors also will notify U.S. EPA as to whether it will cease accepting shipments of waste streams subject to the Benzene Waste NESHAP from that generator or will manage and treat the benzene wastes from that generator in accordance with the requirements of the Benzene Waste NESHAP.

C. FUTURE TAB REPORTING REQUIREMENTS

17. Pursuant to 40 C.F.R. § 61.357(c), Clean Harbors will submit a TAB report for each of its Covered Facilities on or before April 7, 2006, for calendar year 2005 only, that complies with all the requirements of 40 C.F.R. § 61.357(a)(1)-(3), including, but not limited to:

a. the total annual benzene quantity;

b. a table that identifies each benzene containing waste stream and whether or not the stream will be controlled for benzene emissions; and

c. for each stream identified as not being controlled for benzene emissions the table will also include the following: (i) whether or not the water content of the waste stream is greater than 10 percent; (ii) whether or not the waste stream is a process wastewater stream, product tank drawdown, or landfill leachate; (iii) annual waste quantity for the waste stream; (iv) range of benzene concentrations for the waste stream; (v) annual average flow-weighted benzene concentration for the waste stream; and (vi) annual benzene quantity for the waste stream.

18. Each of Clean Harbor's Facilities will submit a TAB report that fulfills the requirements of Paragraph 17 regardless of whether the total annual benzene quantity for that particular Facility is less than 1 Mg/yr. After submitting the report in 2006, each Facility will submit subsequent annual TAB reports only as and if required by 40 C.F.R. § 61.357.

D. REPORTING REQUIREMENTS

19. All notices, reports, or other submissions required of Clean Harbors by this Decree will contain the following certification:

> I certify under penalty of law that this information was 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 directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

V. CIVIL PENALTY

20. No later than thirty (30) days after the Date of Entry of this Consent Decree, Clean Harbors will pay a civil penalty of Three-Hundred Thousand Dollars ($300,000) as follows: (1) Two-Hundred, Seventy-Thousand Dollars ($270,000) to the United States; (2) Fifteen Thousand Dollars ($15,000) to the State of Illinois; and (3) Fifteen Thousand ($15,000) to the State of Louisiana.

a. Payment of the civil penalty owed to the United States under this Paragraph will be made by Electronic Funds Transfer ("EFT") to the United States Department of Justice, referencing USAO File Number 2003 V 00619, DOJ Case Number 90-5-2-1-06949, and the civil action case name and case number of the Northern District of Illinois. The costs of such electronic funds transfer will be the responsibility of Clean Harbors. Payment will be made in accordance with instructions provided to Clean Harbors by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Illinois. Any funds received after 11:00 a.m. (Eastern time) will be credited on the next business day. Clean Harbors will provide notice of payment, referencing USAO File Number 2003 V 00619, DOJ Case Number 90-5-2-1-06949, and the civil action case name and case number, to the Department of Justice and the Office of Regional Counsel of Region 5 of U.S. EPA, as provided in Section XIII ("Notices and Submissions").

b. Payment of the civil penalty owed to the State of Illinois under this Paragraph will be made by certified or corporate check made payable to the "Illinois Environmental Protection Agency," designated to the Illinois Environmental Protection Trust Fund, and sent to the following address:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name and number of the case and the Chicago Facility's Federal Employer Identification Number will appear on the check. A copy of the certified or corporate check and the transmittal letter will be sent to:

Paula Wheeler
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, IL 60601

c. Payment of the civil penalty owed to the State of Louisiana will be made by certified check made payable to the "Louisiana Department of Environmental Quality" and sent to the following address:

Darryl Serio
Fiscal Director
Office of Management and Finance
LDEQ
P.O. Box 4303
Baton Rouge, Louisiana 70821-4303

21. Clean Harbors will pay interest on any unpaid balance of the civil penalty owed which will begin to accrue at the end of the thirty (30) day period described above, at the rate established by the Department of the Treasury under 31 U.S.C. § 3717.

22. Upon entry, this Decree will constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable federal

authority. The United States, Illinois, and Louisiana will be deemed judgment creditors for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

VI. STIPULATED PENALTIES

23. In addition to any interest, Clean Harbors will be liable for a stipulated penalty of $1,000 per day for each day that any amount of the civil penalty under this Decree is not paid when due.

24. Clean Harbors will be liable for the following stipulated penalties for violations of the requirements of this Decree:

a. For each benzene-containing waste stream subject to the Benzene Waste NESHAP for which a Covered Facility fails to comply with the requirements or prohibitions of Paragraphs 8, 10.b, and 14: $4,000 per incident.

b. For each shipment for which a Covered Facility fails to secure the information required by Paragraph 10.a:

Shipment No. for that Covered Facility in a Calendar Year for which the Covered Facility Failed to Secure Required Information	Penalty per Shipment
1st to 3rd shipment	$1,000
4th to 6th shipment	$2,500
7th shipment and above	$5,000

c. For failure to timely submit a revised Waste Material Profile Sheet pursuant to Paragraph 10.c, if a revision to the WMPS is the manner in which Clean Harbors proposes to comply with Paragraph 10.a:

Period of Delay	Penalty per day
Days 1-30	$ 100
Days 31-60	$ 250
Over 60 days	$ 1,000

d. For failing to include in the sampling program under Paragraph 11, a Covered Facility to which Paragraph 11 is applicable: $20,000.

e. For failing to comply with any of the requirements of the sampling program in Paragraphs 11.b through 11.h:

Number of Requirements in a Calendar Year that the Covered Facility Missed	Penalty per Missed Requirement
1st to 3rd	$ 500
4th to 6th	$1,500
7th and Over	$2,500

f. For failure to have adequate personnel or for each failure to timely comply with the training requirements of Paragraph 12: $3,000 per Covered Facility per violation.

g. For each failure to comply with the requirements of Paragraph 15:

Number of Incidents in a 12-month rolling average	Penalty Per Incident
1	$ 5,000
2 to 3	$10,000
4 to 5	$20,000
Over 5	$32,500

h. For each failure to timely submit the materials required to be submitted pursuant to Paragraphs 11.a.ii, 13, 16, 17, and 18:

Period of Delay	Penalty per day
Days 1-30	$ 250
Days 31-60	$ 500
Over 60 days	$ 1,000

i. For each submission of a TAB report from a Covered Facility that does not contain the information required by Paragraphs 17.a , 17.b., and 17.c.(i) - (vi) (Complete TAB Report Table), Clean Harbors will pay a stipulated penalty of $2,500 for each column of information missing in each TAB report for each Covered Facility.

j. For each failure to submit a report that complies with the certification requirements of Paragraph 19, Clean Harbors will pay a stipulated penalty of $2,000.

25. Demand for Stipulated Penalties. Clean Harbors will pay stipulated penalties upon written demand by the United States (either through U.S. EPA or the Department of Justice ("DOJ")) or the Applicable Co-Plaintiff (either through the state attorney general's office or the state agency) by no later than sixty (60) days after Clean Harbors receives such demand. Demand from one agency will be deemed a demand from all applicable agencies, but the agencies must consult with each other prior to making a demand. A demand for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates, the stipulated penalty amount that the United States or the Applicable Co-Plaintiff is demanding for each violation (as can be best estimated), the calculation method underlying the demand, and the grounds upon which the demand is based. After consultation with each other, the United States and the Applicable Co-Plaintiff may, in their unreviewable discretion, waive payment of any portion of stipulated penalties that may accrue under this Consent Decree.

26. Payment of Stipulated Penalties. Stipulated penalties owed by Clean Harbors will be paid 50% to the United States and 50% to the Applicable Co-Plaintiff. If stipulated penalties are

owed as a result of violations at a Covered Facility that is not located in Illinois or Louisiana, 100% of the stipulated penalties owed will be paid to the United States. Stipulated penalties owing to the United States of under $10,000 will be paid by check and made payable to "U.S. Department of Justice," referencing DOJ Number 90-5-2-1-06949 and USAO File Number 2003 V 00619, and delivered to the U.S. Attorney's Office in the Northern District of Illinois, 219 S. Dearborn St., Chicago, IL 60604, and will 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 will be sent to the Office of Regional Counsel of U.S. EPA Region 5, and to DOJ, as provided in Section XIII ("Notices and Submissions"). Stipulated penalties owing to the United States of $10,000 or more and stipulated penalties owing to Co-Plaintiffs Illinois or Louisiana will be paid in the manner set forth in Paragraph 20.

27. Clean Harbors' liability for stipulated penalties will begin to accrue from the first day of noncompliance with any applicable provision of this Consent Decree and will continue to accrue through the date that complete performance occurs or the date complete correction of the noncompliance occurs. Stipulated penalties will accrue regardless of whether a demand for payment has been made, but will not be payable until written demand. A written demand to Clean Harbors will set forth the bases of the Consent Decree violation(s). Stipulated penalties will not accrue, with respect to judicial review by this Court under Section XI ("Retention of Jurisdiction/Dispute Resolution") 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.

28. If Clean Harbors disputes a demand for stipulated penalties, Clean Harbors will invoke the dispute resolution provisions of Section XI ("Retention of Jurisdiction/Dispute Resolution") of this Decree within sixty (60) days of receipt of a demand for payment of stipulated penalties. Invocation of the dispute resolution provisions will occur when Clean Harbors complies with the notice requirements in Paragraph 48 of Section XI ("Retention of Jurisdiction/Dispute Resolution"). Unless Clean Harbors invokes the dispute resolution provisions of this Decree, payment of stipulated penalties will 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 will accrue on any amounts overdue 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.

29. The invocation of dispute resolution procedures under Section XI ("Retention of Jurisdiction/Dispute Resolution") will not of itself extend or postpone any of Clean Harbors' obligations under this Consent Decree, but Clean Harbors' obligation to pay stipulated penalties with respect to the disputed matter will be stayed pending resolution of the dispute. Penalties will accrue as provided in Paragraph 27 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties to the dispute, accrued penalties determined to be owing will be paid within fifteen (15) days of Clean Harbors' receipt of a written demand for payment following the agreement;

b. If the dispute is referred to the Court for resolution and U.S. EPA and, if applicable, the Applicable Co-Plaintiff prevail in whole or in part, Clean Harbors will pay all accrued penalties determined by the Court to be owed to U.S. EPA and, if applicable, the Applicable Co-Plaintiff, 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, Clean Harbors will pay all accrued penalties determined by the District Court to be owing to the United States and, if applicable, the Applicable Co-Plaintiff, into an interest-bearing escrow account within sixty (60) days of receipt of the District Court's decision. Penalties will 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 will pay the balance of the escrow account to U.S. EPA and, if applicable, the Applicable Co-Plaintiff or to Clean Harbors to the extent that it prevails.

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

31. The United States and the Applicable Co-Plaintiff may, in their unreviewable discretion, waive payment of any portion or all of any stipulated penalties that may accrue under this Consent Decree.

32. Nothing in this Section will be construed as prohibiting, altering, or in any way limiting the rights of the United States, Illinois, and Louisiana to seek additional remedies or sanctions, including, but not limited to, additional injunctive relief or statutory penalties for Clean Harbors' violations of this Decree, the CAA, the Benzene Waste NESHAP, or corollary Illinois or Louisiana state provisions.

VII. EFFECT OF SETTLEMENT

33. This Consent Decree resolves any and all of the civil claims of the United States, Illinois, and Louisiana for the violations alleged in the Complaint in this action through the Date of Lodging of this Consent Decree with the District Court. Nothing in this Decree will be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree.

VIII. RESERVATION OF RIGHTS

34. Except as specifically provided in Section VII ("Effect of Settlement"), the entry of this Consent Decree will not limit or otherwise preclude the United States, Illinois, or Louisiana

from taking additional enforcement action with regard to Clean Harbors and/or the Covered Facilities pursuant to any federal law or regulation, or federally enforceable state law, regulation, or permit condition, or any Illinois or Louisiana state law or regulation.

35. Nothing herein will be construed to limit the authority of the United States to undertake any action against any person, including Clean Harbors, to abate or correct conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment, or for any other violation of law or regulation.

36. This Consent Decree does not limit or affect the rights of Clean Harbors, the United States, Illinois, or Louisiana against any third parties or the rights of third parties, not parties to this Consent Decree, against any other parties.

37. The United States, Illinois, and Louisiana reserve any and all legal and equitable remedies, sanctions, and penalties which may be available to them to enforce the provisions of this Consent Decree against Clean Harbors, and further reserve 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.

38. The failure of Clean Harbors to comply with any requirement in this Decree will not excuse the obligation to comply with all of the other requirements contained herein.

IX. RIGHT OF ENTRY

39. Any authorized representative of U.S. EPA or the Applicable State Agencies, including independent contractors, upon presentation of credentials, will have a right of entry upon the premises of the Covered Facilities at any reasonable time for the purpose of monitoring compliance with the provisions of this Consent Decree, including inspecting equipment, and inspecting and copying all records maintained by Clean Harbors relating to Subpart FF. Clean

Harbors will retain such records for the period of the Consent Decree. Nothing in this Consent Decree will limit the authority of U.S. EPA or the Applicable State Agencies to conduct tests and inspections under any statutory or regulatory provision.

X. FORCE MAJEURE

40. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Consent Decree, Clean Harbors will notify the United States and the Applicable Co-Plaintiff in writing as soon as practicable, but in any event within ten (10) Working Days of when Clean Harbors first knew of the event or should have known of the event by the exercise of due diligence. In this notice, Clean Harbors will specifically reference this Paragraph 40 and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by Clean Harbors to prevent or minimize the delay and the schedule by which those measures will be implemented. Clean Harbors will adopt all necessary measures to avoid or minimize such delays. The notice required by this Section will be effective upon the mailing of the same by certified mail, return receipt requested, to the United States and any Applicable Co-Plaintiff, as specified in Section XIII ("Notices and Submissions").

41. Failure by Clean Harbors to substantially comply with the notice requirements of Paragraph 40 as specified above will render this Section X ("Force Majeure") voidable by the United States, in consultation with the Applicable Co-Plaintiff, as to the specific event for which Clean Harbors has failed to comply with such notice requirement, and, if voided, is of no effect as to the particular event involved.

42. The United States, after consultation with the Applicable Co-Plaintiff, will notify Clean Harbors in writing regarding its claim of a delay or impediment to performance within thirty (30) days of receipt of the force majeure notice provided under Paragraph 40. If the United States,

after consultation with the Applicable Co-Plaintiff, agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Clean Harbors including any entity controlled by Clean Harbors and that Clean Harbors could not have prevented the delay by the exercise of due diligence, the parties will stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances. Clean Harbors will not be liable for stipulated penalties for the period of any such delay.

43. If the United States, after consultation with the Applicable Co-Plaintiff, does not accept Clean Harbors' claim of a delay or impediment to performance, the position advanced by the United States, in consultation with the Applicable Co-Plaintiff, will be considered binding unless, within forty-five (45) calendar days of Clean Harbors' receipt of the written summary of the United States' position, Clean Harbors files with the Court a petition which describes the nature of the dispute. Once Clean Harbors has submitted the matter to the Court, the United States and the Applicable Co-Plaintiff will have forty-five (45) days to file its response to the petition. If the Court determines that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Clean Harbors, including any entity controlled by Clean Harbors, and that the delay could not have been prevented by Clean Harbors by the exercise of due diligence, Clean Harbors will be excused as to that event(s) and delay (including stipulated penalties), for a period of time equivalent to the delay caused by such circumstances.

44. Clean Harbors will bear the burden of proving that any delay of any requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond its control, including any entity controlled by it, and that it could not have prevented the delay by the exercise of due diligence. Clean Harbors will also bear the burden of proving the duration and extent of any delay(s)

attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates.

45. Unanticipated or increased costs or expenses associated with the performance of Clean Harbors' obligations under this Consent Decree will not constitute circumstances beyond Clean Harbors' control, or serve as a basis for an extension of time under this Section X ("Force Majeure").

XI. RETENTION OF JURISDICTION/DISPUTE RESOLUTION

46. This Court will retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of the Consent Decree and for the purpose of adjudicating all disputes among the Parties that may arise under the provisions of the Consent Decree, and until the Consent Decree terminates in accordance with Section XV of this Consent Decree ("Termination of Consent Decree").

47. The dispute resolution procedure provided by this Section XI ("Retention of Jurisdiction/Dispute Resolution") will be available to resolve all disputes arising under this Consent Decree, provided that the party making such application has made a good faith attempt to resolve the matter with the other party. The provisions of this Section XI ("Retention of Jurisdiction/Dispute Resolution") will be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

48. The dispute resolution procedure required herein will be invoked upon the giving of written notice by one of the parties to this Consent Decree to another advising of a dispute pursuant to this Section XI ("Retention of Jurisdiction/Dispute Resolution"). The notice will describe the nature of the dispute, and will state the noticing party's position with regard to such dispute. The party receiving such a notice will acknowledge receipt of the notice and the parties will expeditiously

schedule a meeting to discuss the dispute informally not later than fourteen (14) days from the receipt of such notice.

49. Disputes submitted to dispute resolution will, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiations will not extend beyond thirty (30) calendar days from the date of the first meeting between representatives of the United States, the Applicable Co-Plaintiff, and Clean Harbors, unless all of those parties agree that this period should be shortened or extended.

50. In the event that the parties are unable to reach agreement during such informal negotiation period, the United States, in consultation with the Applicable Co-Plaintiff, will provide Clean Harbors with a written summary of its position regarding the dispute. The position advanced by the United States will be considered binding unless, within forty-five (45) calendar days of Clean Harbors's receipt of the written summary of the United States' position, Clean Harbors files with the Court a petition which describes the nature of the dispute. The United States and the Applicable Co-Plaintiff will respond to the petition within forty-five (45) calendar days of filing.

51. In the event that the United States and the Applicable Co-Plaintiff make differing determinations or take differing actions that affect Clean Harbors' rights or obligations under this Consent Decree, the final decisions of the United States will take precedence.

52. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Section XI ("Retention of Jurisdiction/Dispute Resolution") may be shortened upon motion of one of the parties to the dispute.

XII. GENERAL PROVISIONS

53. Not a Permit. This Decree is neither a permit nor a modification of existing permits under any federal, state, or local law and in no way relieves Clean Harbors of its responsibility to comply with all applicable federal, state, and local laws and regulations.

54. Claim/Issue Preclusion. In any subsequent administrative or judicial proceeding initiated by the United States, Illinois, or Louisiana for injunctive relief, penalties, or other appropriate relief relating to Clean Harbors for violations of the Clean Air Act at the Covered Facilities, Clean Harbors will not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States, Illinois, or Louisiana in the subsequent proceeding were or should have been brought in the instant case. Nothing in the preceding sentence is intended to affect Clean Harbors' ability to assert that the claims are deemed resolved by virtue of Section VII ("Effect of Settlement") of this Consent Decree.

55. The United States, Illinois, and Louisiana will not assert or maintain that this Consent Decree constitutes a waiver or determination of, or otherwise obviates, any claim or defense whatsoever, or constitutes acceptance by Clean Harbors of any interpretation or guidance issued by U.S. EPA, IEPA, or LDEQ related to the matters addressed in this Consent Decree, except that, from the Date of Lodging of this Consent Decree and continuing after termination, Clean Harbors accepts U.S. EPA's determination that use of the mid-point in a range of possible benzene concentrations supplied by a generator does not constitute sufficient "knowledge of the waste" to comply with the requirements of 40 C.F.R. § 61.355(c)(2), unless and until modified by a Benzene Waste NESHAP rule change.

56. Other Laws. Except as specifically provided by this Consent Decree, nothing in this Consent Decree will relieve Clean Harbors of its obligation to comply with all applicable federal, state, and local laws, regulations, and permits. Except as provided in Section VII ("Effect of Settlement"), compliance with this Consent Decree will not constitute a defense to any action pursuant to said laws, regulations, or permits. Subject to Section VII ("Effect of Settlement"), nothing contained in this Consent Decree will be construed to prevent or limit the United States', Illinois', or Louisiana's rights to seek or obtain other remedies or sanctions available under other federal, state, or local statutes or regulations, by virtue of Clean Harbors' violation of the Consent Decree or of the statutes and regulations upon which the Consent Decree is based, or for Clean Harbors' violations of any applicable provision of law, other than the specific matters resolved herein. This will include the United States', Illinois', and Louisiana's right to invoke the authority of the Court to order Clean Harbors' compliance with this Consent Decree in a subsequent contempt action.

57. Failure of Compliance. The United States, Illinois, and Louisiana do not, by their consent to the entry of Consent Decree, warrant or aver in any manner that Clean Harbors' complete compliance with the Consent Decree will result in compliance with the provisions of the Benzene Waste NESHAP. Notwithstanding U.S. EPA's, IEPA's or LDEQ's review or approval of any plans, reports, policies, or procedures formulated pursuant to the Consent Decree, Clean Harbors will remain solely responsible for compliance with the terms of this Consent Decree, all applicable permits, and all applicable federal, state, and local regulations, except as provided in Section X ("Force Majeure").

58. Post-Lodging/Pre-Entry Obligations. Obligations of Clean Harbors under the provisions of this Consent Decree to perform duties scheduled to occur after the Date of Lodging of

the Consent Decree, but prior to the Date of Entry of the Consent Decree, will be legally enforceable from the Date of Entry of the Consent Decree. Liability for stipulated penalties, if applicable, will accrue for violation of such obligations and payment of such stipulated penalties may be demanded by the United States, Illinois, or Louisiana as provided in this Consent Decree, provided that stipulated penalties that may have accrued between the Date of Lodging and the Date of Entry may not be collected by the United States, Illinois, or Louisiana unless and until this Consent Decree is entered by the Court.

59. Costs. Each Party to this action will bear its own costs and attorneys' fees.

60. Public Documents. All information and documents submitted by Clean Harbors to the United States, Illinois, and Louisiana pursuant to this Consent Decree will be subject to public inspection, unless subject to legal privileges or protection, or identified and supported as business confidential by Clean Harbors in accordance with applicable state and federal statutes and regulations.

XIII. NOTICES AND SUBMISSIONS

61. With respect to all notices and submissions required by this Decree, these notices and submissions will be made in writing to the following addresses (unless one party previously has notified the other parties in writing of a change in this address list):

As to the United States:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 - Ben Franklin Station
Washington, D.C. 20044
DJ # 90-5-2-1-06949

As to Region 5 of U.S. EPA

Robert H. Smith
Associate Regional Counsel
U.S. EPA - Region 5
77 West Jackson Blvd.
Mail Code C-14J
Chicago, IL 60604-3590

Noel Vargas
Environmental Engineer
U.S. EPA –Region 5
77 W. Jackson Blvd.
Mail Code AT - 18J
Chicago, IL 60604-3590

As to Region 1 of U.S. EPA

Stephen S. Perkins, Director
Office of Environmental Stewardship
USEPA - Region 1 - Mailcode SAA
1 Congress Street, Suite 1100
Boston, MA 02114-2023

ATTENTION: Marianne Milette, Environmental Engineer

As to Region 6 of U.S. EPA

Chief
Air, Toxics, and Inspections Coordination Branch
Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

As to Region 7 of U.S. EPA

Chief
Air, Permitting, and Compliance Branch
Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101

As to Region 8 of U.S. EPA

Technical Enforcement Program Air Director
Mail Code 8ENF-T
Office of Enforcement, Compliance and Environmental Justice
United States Environmental Protection Agency Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

As to the State of Illinois

Manager
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
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As to the State of Louisiana, through the LDEQ

Peggy M. Hatch
Administrator, Enforcement Division
Office of Environmental Compliance
Louisiana Department of Environmental Quality
P.O. Box 4312
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As to Clean Harbors

Raeford Craig Lackey
Vice President and Chief Counsel
Clean Harbors Environmental Services, Inc.
200 Arbor Lake Drive, Suite 300, Law Department
Columbia, SC 29223

General Counsel
Clean Harbors Environmental Services, Inc.
1501 Washington St.
Braintree, MA 02185-9048

Except where otherwise explicitly stated, if Clean Harbors submits reports and notices regarding less than all Covered Facilities (as opposed to a report or notice that involves all Covered Facilities),

Clean Harbors is required to submit the report only to the Applicable EPA Region(s) where the facility(ies) is located. Where notice to the "United States" is required, Clean Harbors must submit such notice to the Department of Justice, U.S. EPA Region 5, and the U.S. EPA Region where the Covered Facility is located.

XIV. MODIFICATION

62. Any material modification of this Decree will be by agreement of the applicable parties to this Decree and in writing and will not take effect unless approved by the Court. Any non-material modification of this Decree will be by agreement of the applicable parties to this Decree and in writing. Nothing in this Decree will be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XV. TERMINATION OF CONSENT DECREE

63. Requirements for Seeking Termination. Clean Harbors may seek termination of this Decree no sooner than March 31, 2009, provided that all of the following have occurred:

a. Clean Harbors has complied, and submits a certification to U.S. EPA (specifically, all U.S. EPA Regions listed in Section XIII) and the Applicable State Agency stating that it has complied, with all of the terms and conditions of: (i) the Benzene Waste NESHAP at each of its Facilities for 24 consecutive months; and (ii) Section IV of this Decree. Such certification will be signed by one or more responsible corporate official(s) at each of the Facilities and will state:

> *I certify that the information contained in this submission is true, accurate, and complete. This certification is based upon my personal preparation, review, or analysis of this submission and/or my supervision of persons who, acting on my direct instructions, made the verification that the submitted information is true, accurate, and complete.*

b. Clean Harbors has paid the entire civil penalty and all stipulated penalties and interest due under Sections V and VI of this Decree.

64. Procedures for terminating this Decree. At such time as Clean Harbors determines that the termination requirements set forth in Paragraph 63 have been satisfied, Clean Harbors will notify the Plaintiffs to this Consent Decree and will provide the certification required by Paragraph 63. If the Plaintiffs agree that Clean Harbors has satisfied the requirements for terminating this Decree, the Parties will jointly file a motion with the Court seeking termination. If the Plaintiffs and Clean Harbors do not agree that the termination conditions have been satisfied, the dispute resolution provisions of this Decree will apply. During the pendency of any dispute regarding whether Clean Harbors has satisfied the requirements for termination of this Decree, this Decree will remain in full force and effect.

65. Survival of Prohibition Against Use of Mid-Point. Notwithstanding the provisions of Paragraphs 63 and 64, the requirements and prohibitions contained in the first two sentences of Paragraph 10.b. continue after termination of the remaining provisions of this Consent Decree unless and until modified by a Benzene Waste NESHAP rule change.

XVI. FINAL JUDGMENT

66. Entry of this Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

67. This Consent Decree will 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 public comments regarding this Decree disclose facts or considerations which indicate that this Decree is inappropriate, improper, or inadequate. Clean Harbors consents to the entry of this Decree without further notice.

68. Additionally, the Parties agree and acknowledge that final approval by Co-Plaintiff, the State of Louisiana, Department of Environmental Quality, and entry of this Consent Decree is subject to the requirements of La. R.S. 30:2050.7, which provides for public notice of this Consent Decree in newspapers of general circulation and the official journals of East Baton Rouge Parish (where the Baton Rouge Facility is located) and the Iberville Parish (where the Plaquemine Facility is located), an opportunity for public comment, consideration of any comments, and concurrence by the State Attorney General. The State of Louisiana reserves the right to withdraw or withhold consent if the comments regarding this Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate.

69. 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.

XVIII. SIGNATORIES

70. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the Parties to this document.

XIX. EFFECTIVE DATE

71. The effective date of this Decree will be the date of entry by this Court.

SO ORDERED:

NOV 15 2005

Date

James T. Holderman

United States District Judge

The undersigned party enters into this Consent Decree in the matter of United States, et al. v. Clean Harbors Environmental Services, Inc., et al.

FOR THE UNITED STATES

KELLY A. JOHNSON
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The undersigned party enters into this Consent Decree in the matter of United States, et al. v. Clean Harbors Environmental Services, Inc., et al.

FOR THE UNITED STATES

GRANTA Y. NAKAYAMA
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Washington, D.C. 20460

The undersigned party enters into this Consent Decree in the matter of United States, et al. v. Clean Harbors Environmental Services, Inc., et al.

FOR THE UNITED STATES

BHARAT MATHUR
Acting Regional Administrator
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The undersigned party enters into this Consent Decree in the matter of United States, et al. v. Clean Harbors Environmental Services, Inc., et al.

FOR THE UNITED STATES

STEPHEN S. PERKINS
Director, Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 (New England)

HUGH W. MARTINEZ
Senior Enforcement Counsel
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Boston, MA 02114-2023

The undersigned party enters into this Consent Decree in the matter of United States, et al. v. Clean Harbors Environmental Services, Inc., et al.

FOR THE UNITED STATES

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CHARLES J. SHEEHAN
Regional Counsel
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Region 6
1445 Ross Ave.
Dallas, TX 75202-2733

The undersigned party enters into this Consent Decree in the matter of United States, et al. v. Clean Harbors Environmental Services, Inc. et al.

FOR THE UNITED STATES

JAMES B. GULLIFORD
Regional Administrator
U.S. Environmental Protection Agency
Region 7

for MARTHA R. STEINCAMP
Regional Counsel
U.S. Environmental Protection Agency
Region 7

The undersigned party enters into this Consent Decree in the matter of United States, et al. v. Clean Harbors Environmental Services, Inc. et al.

FOR THE UNITED STATES

ROBERT E. ROBERTS
Regional Administrator
U.S. Environmental Protection Agency
Region 8

The undersigned party enters into this Consent Decree in the matter of United States, et al. v. Clean Harbors Environmental Services, Inc. et al.

FOR THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos Litigation Division

BY: Rosemarie Cazeau
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General
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Chicago, IL 60601

The undersigned party enters into this Consent Decree in the matter of United States, et al. v. Clean Harbors Environmental Services, Inc. et al.

FOR THE STATE OF LOUISIANA

CHARLES C. FOTI, JR.
Attorney General

By: _____
Megan K. Terrell (La. #29443)
Assistant Attorney General
Louisiana Department of Justice
P.O. Box 94005
Baton Rouge, LA 70804-9005

FOR THE STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF ENVIRONMENTAL QUALITY

_____
HAROLD LEGGETT, PH.D
Assistant Secretary
Office of Environmental Compliance
Louisiana Department of Environmental Quality

_____
R. STEVEN BEARD (La. #27771)
Attorney II
Office of the Secretary
Legal Affairs Division
Louisiana Department of Environmental Quality
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Baton Rouge, Louisiana 70821-4302

The undersigned party enters into this Consent Decree in the matter of United States, et al. v. Clean Harbors Environmental Services, Inc. et al.

FOR DEFENDANTS

CLEAN HARBORS SERVICES, INC.,
SPRING GROVE RESOURCE RECOVERY, INC.,
CLEAN HARBORS OF BRAINTREE, INC.,
CLEAN HARBORS OF CONNECTICUT, INC.,
CLEAN HARBORS BATON ROUGE, LLC,
CLEAN HARBORS PLAQUEMINE, LLC,
CLEAN HARBORS LA PORTE, L.P.,
CLEAN HARBORS DEER PARK, L.P.,
CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.,
CLEAN HARBORS ARAGONITE, LLC,

Raeford Craig Lackey, Esq.

RAEFORD CRAIG LACKEY
Vice President and Chief Counsel
Clean Harbors Environmental Services, Inc.
200 Arbor Lake Drive, Suite 300, Law Department
Columbia, SC 29223

CERTIFICATE OF SERVICE

I hereby certify that on this 12st day of September 2005, I caused a true copy of the foregoing Unopposed Motion of the United States to Lodge Consent Decree to be served by first-class mail, postage prepaid, upon the following counsel:

Raeford Craig Lackey
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Annette M. Lang

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