

**AUDIT AGREEMENT  
FOR TEXAS FLEXIBLE PERMIT HOLDERS**

between the

**Environmental Protection Agency**

and

**[Audit Participant]**

Whereas, the United States Environmental Protection Agency (“EPA”) recognizes the value to EPA, Industry, and the Public of clearly defined emission, monitoring, and reporting obligations under federal law for sources currently regulated under the Texas flexible permit program.

Whereas, EPA has created a voluntary Audit Program designed to allow Texas flexible permit holders to establish and/or identify federally-enforceable Emission Unit Requirements, as the term is defined herein, for inclusion in federal Clean Air Act (“CAA”) Title V permits, and appropriate federally-enforceable non-Title V permits. *See* \_\_\_\_\_ (“Program Notice”).

Whereas, the Texas Commission for Environmental Quality (“TCEQ”) is the delegated permitting entity for the State of Texas, providing guidance on Texas permitting and regulations, and processing permit applications filed pursuant to Consent Agreement and Final Order (“CAFO”) entered as part of this Audit Program.

Whereas, EPA and \_\_\_\_\_ (“Audit Participant”) intend to enter into a CAFO memorializing the Audit Participant’s commitment to seek the inclusion of agreed upon Emission Unit Requirements in both Title V and appropriate federally-enforceable non-Title V permits.

Whereas EPA and the Audit Participant (the “Parties”) desire to enter into and be bound by the terms of this “Audit Agreement for Texas Flexible Permit Holders” (“Agreement”).

Now, therefore, in consideration of the above, EPA and the Audit Participant agree as follows:

## **I. Applicability**

1. This Agreement shall apply to and be binding upon EPA and the Audit Participant, including but not limited to its officers, directors, agents, servants, employees, successors, and assigns. The Audit Participant shall give notice of this Agreement to any successor in interest prior to the transfer of the Facility or any ownership interest in any Emission Source regulated under the Texas flexible permit.

## **II. Representations**

2. The Audit Participant represents that:
  - a. The facility that shall be subject to the terms of this Agreement is \_\_\_\_\_ and is located at \_\_\_\_\_ (“Facility”).
  - b. It is the owner and/or operator of the Facility.
  - c. It is submitting this executed Agreement to EPA within \_\_\_\_ days of the Audit Program Notice.

## **III. General Provisions**

3. For purposes of this Agreement and any proceeding, without trial or any adjudication of facts, the Audit Participant admits that EPA has jurisdiction over the subject-matter of the terms of this Agreement and any materials submitted to EPA pursuant to this Agreement.
4. The auditor’s identification of potential areas of noncompliance pursuant to this Agreement shall not constitute an admission of any violation of the CAA or any other environmental requirements for purposes of this Agreement or any other civil, criminal, or administrative proceeding.
5. No later than 30 days prior to the closing date of a transfer to another party of the Facility, the Audit Participant shall provide written notice and a copy of this

Agreement to each party accepting transfer of the Facility. Such notice shall include this Agreement and any materials developed pursuant to this Agreement. Further, the Audit Participant shall notify EPA in writing of such a transfer of the Facility at least 10 days prior to such transfer, including identification of the purchaser and the Facility.

#### **IV. Definitions**

6. “Audit” shall mean the comprehensive third-party CAA compliance audit as described in this Agreement and at \_\_\_ Fed. Reg. \_\_\_\_ (Date).
7. “Audit Participant’s Report and Certification” shall mean the report that provides the Audit Participant’s comments on the Audit Report, including the Audit Participant’s proposed table of applicable Emission Unit Requirements for each Emission Unit. Proposal of Emission Unit Requirements in the Audit Participant’s Report and Certification binds the Audit Participant to apply for a revision to its Title V permit, and to obtain appropriate federally-enforceable non-Title V permits. This obligation shall be memorialized in a federal administrative CAFO between the Audit Participant and EPA.
8. “Audit Program” shall mean the Audit itself, all deliverables, and process required under this Audit Agreement.

9. “Audit Report” shall mean the report drafted by the Third-Party Auditor that presents the detailed results of the Audit and identifies Emission Unit Requirements for each Emission Unit.
10. “Best Available Control Technology” or “BACT” shall mean Best Available Control Technology as defined in the federally approved Texas SIP or as defined in 40 C.F.R. § 52.21 where no federally approved definition of BACT can be identified in the Texas SIP.
11. “Change” shall mean the act, process, or result of altering or modifying.
12. “Community-based Projects” or “CPs” shall mean projects completed by or paid for by an Audit Participant focused on improving, protecting, or reducing community risks to public health or the environment that could have been caused by potential violations by the Audit Participant.
13. “Consent Agreement and Final Order” or “CAFO” shall mean the final order memorializing the Audit Participant’s commitment to apply for a Title V permit revision, and appropriate federally-enforceable non-Title V permits.
14. “Emission Determination(s)” shall mean the conclusions of the Third-Party Auditor as to pollutant emission levels, increases, or decreases at any Emission Unit and non-Texas Flexible Permit Emission Units at the Facility.

15. “Emission Unit” shall mean any part of a stationary source regulated under a Texas Flexible Permit that emits, or would have the potential to emit, any pollutant subject to regulation under the Federal CAA.
16. “Emission Unit Requirements” shall mean: 1) pollutant emission limitations/standards; 2) controls/operational changes/operational practices needed to meet the emission limitations/standards; 3) monitoring and reporting requirements necessary to determine continuous compliance with emission limitations; 4) a compliance schedule, if needed; and 5) interim emission limitations/standards, if needed.
17. “Facility” shall mean the \_\_\_\_\_ [type of facility, i.e., refinery, olefins plant, power generating plant, etc.] located at \_\_\_\_\_ [address] \_\_\_\_\_ [owned and/or operated] by \_\_\_\_\_ holding the Texas Flexible Permit number(s) \_\_\_\_\_ [flexible permit number].
18. “Federal CAA Compliance Status” shall mean a determination of the Emission Unit Requirements for a particular Emission Unit based on review of the operational and physical history of the Emission Unit with reference to applicable federal regulations and requirements in the federally approved Texas SIP. The concept of Federal CAA Compliance Status in the context of this program is further defined and explained in paragraphs below.

19. “Hyperlinks” shall mean a reference to an external piece of information in any of the work products generated pursuant to this Agreement accessible by clicking on the Hyperlink.
20. “Hypertext” shall mean text, displayed on a computer, with references (Hyperlinks) to other text that the reader can immediately access by a mouse click.
21. “Lowest Achievable Emissions Rate” or “LAER” shall mean Lowest Achievable Emissions Rate as defined in the federally approved Texas SIP or as defined in 40 C.F.R. § 52.21 where no federally approved definition of LAER can be identified in the Texas SIP.
22. “New Source Review” or “NSR” shall mean both the New Source Review and Prevention of Significant Deterioration programs authorized by Congress at 42 U.S.C. §§ 111 and 112, the federal rules at 40 C.F.R. Parts 51 and 52, and the Texas SIP requirements promulgated to implement the same.
23. “Program Notice” shall mean EPA’s Texas Flexible Permit Audit Program Notice published on \_\_\_\_\_ at \_\_\_ Fed. Reg. \_\_\_\_\_.

24. “Texas Flexible Permit(s)” shall mean Texas air emission control permits issued Texas to the Facility pursuant to 30 TAC 116.710.
25. “Texas State Implementation Plan” or “Texas SIP” shall mean the portions of Texas state air regulations that were submitted by Texas and approved by EPA for inclusion in the federally recognized SIP. The current content of the SIP and an historical overview of previous versions of the SIP can be found at <http://yosemite1.epa.gov/r6/Sip0304.nsf/home?Openview&Start=1&Count=30&Expand=6>.
26. “Third-Party Auditor” shall mean the independent Third-Party company(ies) hired by the Audit Participant to conduct the Audit and who meet the requirements set forth in Paragraph 27 below.

**V. Specific Requirements and Instructions Regarding the Audit and Reports**

**A. Independence of and Requirements Regarding the Third-Party Auditor**

27. The requirements of paragraphs 28 - 32 below, shall apply to the Third-Party Auditor and employees of the Third-Party Auditor working on the Audit performed to satisfy this Audit Agreement.



28. The Third-Party Auditor shall have a reasonable number of employees, but in no instance less than one, who meets the qualification requirements of ISO 19011 (First edition, 2002-10-01).
29. The Third-Party Auditor shall be paid by the Audit Participant in an amount sufficient to carry-out the provisions of this Audit Agreement. The Third-Party Auditor must not be an employee or former employee of the Audit Participant. The Third-Party Auditor must not directly own any stock in the Audit Participant or in any parent or subsidiary, and must have no direct financial stake in the outcome of the Audit conducted pursuant to this Audit Agreement.
30. The Third-Party Auditor shall not have been involved in the development of the CAA permits held by the Audit Participant at the facility being audited under this program.
31. If the Audit Participant has any contractual relationship with the Third-Party Auditor, the Audit Participant shall disclose to EPA such past or existing contractual relationships in an attachment to this Audit Agreement.
32. The Audit Participant agrees to not enter into any contractual or employment relationships with the Third-Party Auditor for a period of 1 year after the submission of the Audit Report.

33. Within 15 days of the Audit Participant's execution of this Audit Agreement, EPA may choose to reject the Third-Party Auditor. EPA may elect to reject the Third-Party Auditor for failing to meet any of the conditions identified in paragraphs 28 - 32 of this Audit Agreement or where it has reason to believe that an actual or potential conflict may exist as between the Audit Participant and its proposed Third-Party Auditor. If EPA rejects the Third-Party Auditor, the Audit Participant may choose another Third-Party Auditor, again subject to EPA rejection.
34. The conclusions of the Third-Party Auditor must be its own, based on best professional judgment applied to the facts, materials, and information collected, obtained, or learned during the course of the Audit. The Audit Report submitted by the Third-Party Auditor must be stamped by a professional engineer licensed in the State of Texas.
35. The Audit Participant shall take all steps necessary steps to ensure that it openly share with the Third-Party Auditor confidential and business sensitive information.
36. To the extent that documents needed to complete the Audit are not available in the files of the Audit Participant, the Third-Party Auditor, with assistance as necessary from the Audit Participant, shall seek the needed documentation elsewhere.

37. This Audit Agreement includes requirements regarding the performance of the Audit and the form of deliverables. The Audit Participant and Third-Party Auditor are responsible for abiding by these requirements. Deliverables must be clear and detailed, and supporting information must be submitted in a manageable form. Lack of clarity, incomplete documentation, and/or documentation submitted in an unorganized or difficult to manage manner shall be grounds for rejection of the Audit.

38. As to all Emissions Determinations made and Emission Unit Requirements recommended pursuant to this Agreement, the Third-Party Auditor shall make best professional efforts to ensure the information reported to EPA is as accurate as possible. The Third-Party Auditor may arrive at Emission Determinations and Emission Unit Requirements by verifying emissions estimates and measurements made by the Audit Participant or a predecessor in interest, by re-calculating emission values previously used in permitting or other contexts, or by using its best professional judgment to calculate emissions using the most accurate assumptions, emission factors, or other available information and/or tools.

**B. Overview of Audit Requirements and Scope**

39. The Audit Participant shall make best efforts to ensure that the Audit represents:

a) an accurate determination of each Emission Unit's current Federal CAA

Compliance Status; and; b) an accurate determination of the applicable Emission Unit Requirements for each Emission Unit.

40. The Audit will consist of a detailed review of the physical, operational, and regulatory history of each Emission Unit. The review time frame, except for NSR, shall be from the date the Texas Flexible Permit became effective to the present. In the case of the NSR review, the emissions review time frame may need to include a period of time prior to the issuance of the flexible permit in order to establish a NSR emissions baseline. The historical review is critical to this process because various types of Changes may have caused Emission Units to be subject to various federal CAA regulations. The Audit shall clearly identify federal rules applicable to each Emission Unit and demonstrate each Emission Unit's compliance status with federal rules.
41. The Third-Party Auditor shall prepare a version of the Audit Report that excludes any Confidential Business Information ("CBI"). The Audit Participant shall prepare a version of the Audit Participant's Report and Certification that excludes any CBI. These CBI redacted reports, along with the negotiated CAFO between the Audit Participant and EPA shall be posted on the Internet for public review and comment.
42. All Audit deliverables shall be electronic Hypertext documents allowing all supporting material related to the Audit to be accessed by clicking on the

Hyperlinks imbedded in the deliverables.

43. Documents supporting the analysis and conclusions of the Audit shall be scanned into pdf files in the manner in which they were originally produced and delivered by the author. For example, in scanning a permit application, the scan should include everything that was in the envelope that was originally sent to the state of Texas. Items like reports should include the transmittal letter and all attachments as part of the same pdf file that includes the report. CBI documents shall be provided separately.

44. Each scanned document shall be named in the following manner: date [underscore] transmitting party [underscore] primary recipient [underscore] beginning bates stamp number [underscore] .pdf. For example, a letter from John Doe, the plant manager of X corporation's facility to Tom Permit-Writer of TCEQ sent June 6, 2006 with a beginning bates stamp of 0005555 should be titled: 06062006\_xcorp\_tceq\_0005555.pdf. In the situation where transmittal letters have a different issuance date from the attached material, the date of the transmittal letter shall be used in the title of the pdf.

**C. Development of Community-Based Projects**

45. Within 30 days of signing the Audit Agreement, the Audit Participant, shall initiate contacts with representative of their local community to initiate

discussions focused on identifying potential candidate CP(s). In developing their CP(s), Audit Participants will be required to work with their local community representatives to develop the project details and an implementation schedule that will be included in the final CAFO. Each CP must have a clear nexus to potential air emissions from the Facility and identify the benefits to be received by the community as a result of the project.

46. The required value of CPs to be implemented by each Audit Participant will be determined using three factors:
  - a. Flexible permit amendments (an indicator of changes at the facility that were not authorized pursuant to a properly-issued federally-enforceable permit);
  - b. Total criteria pollutant emissions (an indicator of potential for community and environmental impacts); and
  - c. Total NSR authorizations for the facility during the period of time that the Audit Participant's Texas Flexible Permit was in effect (an indicator of facility complexity).
47. EPA will utilize these factors to divide the universe of Texas Flexible Permit holders into four tiers based upon the composite ranking of the facility. The composite score is obtained by summation of the facilities ranking as compared to all Flexible Permit holders (from 1 to 126) using the three factors in paragraph 46 above. The tiers will determine the minimum required expenditure for the CP(s). See Appendix A for the Tiered Ranking of Flexible Permit Holders.

**Table of Community Project Valuations by Tiered Ranking  
of the Flexible Permit Holders**

Tier	Ranking	CP(s) Expenditure Required
Tier 1	1-31	\$2,000,000 – \$4,000,000
Tier 2	32-64	\$1,000,000 – \$2,000,000
Tier 3	64-95	\$250,000 – \$1,000,000
Tier 4	96-126	\$50,000 – 250,000

48. Attachment A includes a listing of all Texas Flexible Permit holders with an indication of into which CP tier each facility falls, including an overview of how the specific calculations were completed.
  
49. Within 180 days of signing the Audit Agreement, the Audit Participant will submit to EPA a final CP proposal for approval. The CP proposal shall include a detailed description of the project(s), a schedule for project implementation (CPs must be completed within one year of the CAFO date), a clear discussion of air nexus, and a discussion of the community involvement and outreach conducted as the project was developed.

50. The final CP(s) will be specified in the CAFO and will include a detailed description of the project and a schedule for implementation of the project, interim status reports and a final project report to be completed within the term of the CAFO.

**D. Applicable law for the NSR portion of the Audit**

51. The Third-Party Auditor shall apply the version of the NSR regulations that were federally approved and therefore included in the Texas SIP at the time of the particular Change being reviewed. In reviewing Changes that triggered or should have triggered NSR review, the attainment status of the area in which the Facility is located at the time of the Changes under review shall be used for purposes of determining the major modification threshold and the required level of control, unless NSR non-compliance is identified. In the case of non-compliance, the current attainment status shall be used to determine the level of control.

**E. Establishment of NSR Emission Unit Requirements**

52. This Audit Program does not automatically require participants to seek current LAER/BACT Emission Unit Requirements at every Emission Unit regulated under a Texas Flexible Permit.



53. NSR Emission Unit Requirements shall be currently applicable, and therefore approvable by EPA in the context of this Audit Program, where during the term of the flexible permit the Emission Unit was not changed in such a way so as to require new more stringent NSR Emission Unit Requirements.
54. If NSR Emission Unit Requirements were developed during the term of the Audit Participant's Flexible Permit, such Emission Unit Requirements may be currently applicable, and therefore approvable by EPA in the context of this Audit Program, where such Emission Unit Requirements were developed in a manner fully consistent with the Federally Approved SIP in effect at the time the promulgation of the Emission Unit Requirements. The Third-Party Auditor shall make a specific determination to ensure that each Emission Unit Requirement was issued consistent with the processes outlined in the Federally Approved SIP.
55. If EPA determines that the Audit Participant is in non-compliance with NSR, installation of emission controls consistent with current year LAER/BACT for the Emission Units implicated by the NSR non-compliance is required under this program. EPA may determine that non-compliance with NSR should result in the collection of civil penalties from the Audit Participant. The parties would need to agree to the level of such penalties prior to EPA's issuance of a covenant-not-to-sue under this program.

**F. Requirements for the NSR section of the Audit Report**

56. Part 1 of the NSR Section of the Audit Report shall consist of a detailed summary of the Audit process. This part shall include a description of the personnel and data tools used, a general description of the documents reviewed, and a discussion of any serious problems encountered in conducting the Audit.
57. Part 2 of the NSR Section of the Audit Report shall consist of an executive summary of the findings of the NSR portion of the Audit, including, but not limited to:
- a. A detailed description of all prior NSR permits that were replaced by the flexible permit;
  - b. A description of the NSR potential noncompliance found, if any, at each Emission Unit;
  - c. A list of Emission Unit projects/Changes that exceeded NSR significance thresholds but that netted out of BACT review or LAER review;
  - d. A list of the recommended Emission Unit Requirements dictated by the NSR review;
  - e. Summaries of all Emission Determinations;
  - f. Summaries of BACT or LAER determinations;
  - g. For all NSR Emission Unit Requirements established by TCEQ during the term of the Flexible Permit, a detailed analysis of why or why not the process

used by TCEQ complied with the contemporaneous, federally approved SIP;  
and

- h. For all instances of NSR non-compliance identified, a list of proposed Emission Unit Requirements for each emissions unit where non-compliance was identified. The Third-Party Auditor will use the BACT/LAER Clearing House to provide recommendations of present day (2010) BACT or LAER.
58. Part 3 of the NSR Section of the Audit Report shall consist of a detailed narrative describing the Audit review process for each Emission Unit, including, but not limited to the process analyses, emissions analyses, and regulatory analyses, emissions calculations (including any formula, assumptions and/or emission factors used), and the conclusions. All supporting materials shall be referenced in footnotes with Hyperlinks to historical and contemporaneous supporting documents.
59. Part 4 of the NSR Section of the Audit Report shall consist of a chronological list of all documents produced in support of the NSR portion of the audit. The list shall state the name of the document, its date, its bates stamp range, attachments appended to the document and the bates stamp range of such attachments, and a Hyperlink to the pdf of each document. All documents shall be produced in searchable pdf format utilizing optical character recognition.

60. Part 5 of the NSR Section of the Audit Report shall consist of a table of all applicable NSR related Emission Unit Requirements for each Emission Unit that will provide the basis for necessary permitting revisions by the appropriate permitting authority.

**G. Requirements for non-NSR Audit and non-NSR section of the Audit Report**

61. The non-NSR CAA Audit shall determine the CAA compliance status and recommended Emission Unit Requirements for each Emission Unit with reference to the non-NSR federal CAA regulations in effect at the time of the Emission Unit's construction or at the time of any event that may have caused the Emission Unit to be subject to non-NSR federal CAA regulations or that may have changed the Emission Unit's requirements pursuant to non-NSR federal CAA regulations. In the case of Emission Units that triggered NSR and require BACT or LAER level controls, the Audit Report shall also explicitly state all other applicable CAA regulations and the corresponding Emission Unit Requirements.
62. Part 1 of the non-NSR Section of the Audit Report shall consist of a detailed summary of the Audit process. This section shall include a description of the personnel and data tools used, a general description of the documents reviewed, and a discussion of any serious problems encountered in conducting the Audit.

63. Part 2 of the non-NSR Section of the Audit Report shall consist of an executive summary of the findings of the non-NSR audit, including but not limited to:
- a. A detailed description of all prior SIP based permits that were replaced by the flexible permit;
  - b. A description of all non-NSR CAA potential violations found;
  - c. Summaries of all Emission Determinations; and
  - d. Recommended non-NSR Emission Unit Requirements.
64. Part 3 of the non-NSR Section of the Audit Report shall consist of a detailed narrative describing the review process of each Emission Unit, including, but not limited to the process analyses, emissions analyses, and regulatory analyses, emissions calculations (including any formula, assumptions and/or emission factors used), and the conclusions. All supporting materials shall be referenced in footnotes with Hyperlinks to historical and contemporaneous supporting documents.
65. Part 4 of the non-NSR Section of the Audit Report shall consist of a chronological list of all documents produced in support of the non-NSR portion of the audit. The list shall state the name of the document, its date, its bates stamp range, attachments appended to the document and the bates stamp range of such attachments, and Hyperlinks to the pdf of each document. All documents shall be produced in searchable pdf format utilizing optical character recognition.

66. Part 5 of the non-NSR Section of the Audit Report shall consist of a table of all applicable non-NSR related Emission Unit Requirements for each Emission Unit that will provide the basis for necessary permitting revisions by the appropriate permitting authority.

**H. Audit Report Certifications**

67. The Audit Report shall include the following certification executed by a responsible official representing the Third-Party Auditor:

I certify under penalty of law that this document was prepared  
at my direction, and to the best of my knowledge and belief,  
the information submitted is true, accurate, and complete.

68. The Audit Report and all Emission Unit Requirements (including underlying Emission Determinations and LAER/BACT analysis) shall be certified as accurate by a registered professional engineer.

69. The Audit Report shall include the following certification executed by a responsible official representing the Audit Participant:

I certify under penalty of law that \_\_\_\_\_ [the Audit Participant]  
to the best of my knowledge and belief has cooperated fully

with \_\_\_\_\_ [the Third-Party Auditor] in its efforts to prepare this document, has provided all information requested by \_\_\_\_\_ [the Third-Party Auditor], and that the information provided to \_\_\_\_\_ [the Third-Party Auditor] is true, accurate, and complete.

**I. Audit Participant's Report and Certification**

70. The Audit Participant's Report and Certification shall consist of the following sections:
- a. An Introduction/Executive Summary outlining the differences between the conclusions made in the Audit Report and the conclusions made in the Audit Participant's Report and Certification, if any.
  - b. A version of the Audit Report with "redline" comments, deletions, and insertions by the Audit Participant. In this section, the Audit Participant shall make, to the extent necessary, detailed presentations on why its conclusions differ from those in the Audit Report. The Audit Participant may present information in the form of bracketed text within the Audit Report redline or by adding Hyperlinks to more detailed supplementary materials.
  - c. An Excel spreadsheet including a row for each Emission Unit regulated pursuant to the Texas Flexible Permit with proposed Emission Unit Requirements. This spreadsheet shall include Hyperlinks to all material supporting the each proposed Emission Unit Requirement.

- d. The following certification executed by a responsible official representing the  
Audit Participant:

I certify under penalty of law that this document was  
prepared at my direction, and to the best of my knowledge  
and belief, the information submitted is true, accurate, and  
complete, and that all Emission Unit Requirements,  
Emissions Determinations, and LAER/BACT analyses  
were reviewed and certified as accurate by a registered  
professional engineer.

**J. Notification**

71. The Audit Participant designates the following individual as its contact person to  
receive all communication from EPA and the Third-Party Auditor concerning this  
Agreement:

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(name, title, address, phone, email)



72. The Third-Party Auditor designates the following individual as its contact person to receive all communication from EPA and the Audit Participant concerning this Agreement:

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73. EPA designates the following individual as its contact person to receive all communication from the Audit Participant and Third-Party Auditor concerning this Agreement:

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74. The parties may re-designate their contact persons in writing at any time.

#### **VI. Audit Schedule and CAFO Process**

75. The Audit Report shall be delivered to EPA no later than 160 days after the effective date of the Audit Agreement. A version of the Audit Report with CBI redacted will be published on the Internet upon receipt by EPA. EPA shall review the independence of the Third-Party Auditor prior to executing the Audit Agreement.

76. No later than 180 days after the effective date of the Audit Agreement, the Audit Participant will submit to EPA a final CP proposal for approval.
77. No later than 250 days after the effective date of the Audit Agreement, the Audit Participant shall deliver to EPA the Audit Participant's Report and Certification. A version of the Audit Participant's Report and Certification with CBI redacted will be published on the Internet upon receipt by EPA.
78. In the period subsequent to delivery of the Audit Participant's Report and Certification, EPA and the Audit Participant may discuss the content of the Audit Report and the Audit Participant's Report and Certification. EPA may seek additional information from the Audit Participant. The Audit Participant agrees to respond in a timely manner to any such request.
79. At any time after the delivery of the Audit Participant's Report and Certification, EPA may propose to the Audit Participant a form of CAFO that is consistent with the model CAFO attached to this agreement as an Attachment B.
80. If EPA agrees with all of the Emission Unit Requirements proposed in the Audit Participant's Report and Certification, the CAFO will require that the Audit Participant apply for a Title V permit revision to incorporate and obtain

appropriate federally-enforceable non-Title V permits to memorialize all such Emission Unit Requirements and require the Audit Participant to perform agreed upon CP(s). The Audit Participant hereby agrees to sign such a CAFO within 15 days of receipt.

81. If EPA agrees with some, but not all of the Emission Unit Requirements proposed in the Audit Participant's Report and Certification, the CAFO may include a subset of the Emission Unit Requirements proposed in the Audit Participant's Report and Certification, along with either Emission Unit Requirements agreed to by the Parties, and/or where no agreement can be reached, Emission Unit Requirements chosen by EPA. The CAFO will require that the Audit Participant apply for a Title V permit revision to incorporate and obtain appropriate federally-enforceable non-Title V permits to memorialize all such Emission Unit Requirements and require the Audit Participant to perform agreed upon CP(s). The Audit Participant shall have 30 days to sign the CAFO. If the Audit Participant does not sign the CAFO, the Audit process ends with no agreement as to Emission Unit Requirements or CP(s).
82. Once a CAFO has been signed by the Audit Participant and by EPA, EPA will file the CAFO, and a short letter summarizing the CAFO with the EPA Region 6 Judicial Officer. At the same time, the CAFO will be published on the Internet for a public comment period of 30 days.

83. After the public comment period ends, EPA will consider any public comments, and, as appropriate, seek to work with the Audit Participant to revise the CAFO based on such public comments. After any necessary revisions are made, EPA will seek finalization of the CAFO by the Region 6 Judicial Officer. The offering of the CAFO for public comment does not explicitly create an obligation for EPA response or inclusion of such comments nor does this create any rights for public objection to the final CAFO.

**VII. Compliance with Laws and Regulations, Reservation of Rights, and Modifications**

84. Neither the existence of this Agreement nor compliance with this Agreement relieves the Audit Participant of the obligation of continued compliance with the regulations covered under this Agreement, and all other applicable federal, state, and local laws and regulations.
85. This Audit and CAFO do not prejudice the permitting process or replace it. The agreed upon Emission Unit Requirements are minimum requirements in order for the Audit Participant to receive a covenant-not-to-sue pursuant to the Audit Program. The permitting authority will follow the rules and processes in place including public participation at the appropriate time.

86. EPA reserves its rights to proceed against the Audit Participant for violations outside the scope of the Audit and for violations within the scope of this Audit that are not explicitly released in the CAFO. EPA reserves the right to commence an action against any person, including the Audit Participant in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare, or environment. This Agreement is not intended, and shall not be construed, to resolve any claim for criminal sanctions now pending or sought in the future, and shall not limit the right of the United States to pursue criminal sanctions for violation of law.
87. Nothing in this Agreement shall limit the authority of EPA to conduct any inspections or information gathering under applicable federal law.
88. A writing signed by the parties may modify this Agreement.

WE, THE UNDERSIGNED, HEREBY AGREE TO BE BOUND BY THIS  
AGREEMENT:

For U.S. EPA:

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John Blevins, Director

Compliance Assurance and Enforcement Division

EPA Region 6

For \_\_\_\_\_ [Audit Participant]:

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**Attachment A to Audit Agreement**  
**Tiered Ranking of Texas Flexible Permits**

<b>RN#</b>	<b>Company Name</b>	<b>Permit Number</b>	<b>Tier</b>
RN100225945	THE DOW CHEMICAL COMPANY	20432	1
RN102579307	EXXON MOBIL CORPORATION	18287	1
RN102495884	CONOCOPHILLIPS COMPANY	9868A	1
RN100209451	MOTIVA ENTERPRISES LLC	8404	1
RN100211879	SHELL CHEMICAL LP	56496	1
RN100235266	FLINT HILLS RESOURCES LP	8803A	1
RN100238385	VALERO REFINING COMPANY - TEXAS	39142	1
RN102535077	BP PRODUCTS NORTH AMERICA INC	47256	1
RN102584026	THE PREMCOR REFINING GROUP INC	6825A	1
RN100218130	HOUSTON REFINING LP	2167	1
RN102574803	EXXON MOBIL CORPORATION	20211	1
RN100210517	DIAMOND SHAMROCK REFINING COMPANY LP	9708	1
RN100210608	MARATHON PETROLEUM COMPANY LLC	22433	1
RN102450756	EXXONMOBIL OIL CORPORATION	49138	1
RN102534138	FLINT HILLS RESOURCES LP	6308	1
RN100211663	VALERO REFINING-TEXAS LP	2937	1
RN100214386	VALERO REFINING-TEXAS LP	38754	1
RN102018322	CHEVRON PHILLIPS CHEMICAL COMPANY LP	4437A	1
RN100542802	DIAMOND SHAMROCK REFINING COMPANY LP	50607	1
RN102320850	CHEVRON PHILLIPS CHEMICAL COMPANY LP	21918	1
RN100213016	WESTERN REFINING COMPANY LP	18897	1
RN100217389	FLINT HILLS RESOURCES LP	16989	1
RN100219286	HOLCIM TEXAS LIMITED PARTNERSHIP	8996	1
RN100238708	INEOS USA LLC	95	1
RN100825249	CHEVRON PHILLIPS CHEMICAL COMPANY LP	22690	1
RN100250869	ALON USA LP	36845	1
RN100209857	CHEVRON PHILLIPS CHEMICAL COMPANY LP	32713	1
RN100211879	SHELL OIL COMPANY	21262	1
RN100870898	THE GOODYEAR TIRE & RUBBER COMPANY	6618	1
RN100212356	LOCKHEED MARTIN CORPORATION	16862	1
RN100224740	OILTANKING HOUSTON LP	5631	1
RN102536307	BP AMOCO CHEMICAL COMPANY	1176	2
RN100224468	FIRESTONE POLYMERS LLC	292	2
RN100229905	INEOS POLYETHYLENE NORTH AMERICA	49823	2
RN100237452	KM LIQUIDS TERMINALS LLC	2193	2
RN100226844	LOWER COLORADO RIVER AUTHORITY	51770	2
RN102212925	EXXON MOBIL CORPORATION	3452	2
RN100217231	OILTANKING TEXAS CITY LP	3284	2
RN101042885	OILTANKING BEAUMONT PARTNERS LP	21356	2
RN101618759	FLINT HILLS RESOURCES LP	18105	2
RN102180486	MAGELLAN TERMINALS HOLDINGS LP	4850	2
RN102537289	INEOS POLYMERS INC	28351	2
RN102771078	NORBORD TEXAS JEFFERSON INC	24679	2
RN100210095	US DEPARTMENT OF THE ARMY	79097	2

**Attachment A to Audit Agreement**  
**Tiered Ranking of Texas Flexible Permits**

<b>RN#</b>	<b>Company Name</b>	<b>Permit Number</b>	<b>Tier</b>
RN100219005	3M COMPANY	71623	2
RN102323268	ENTERPRISE PRODUCTS OPERATING LLC	76070	2
RN100543040	NORBORD TEXAS NACOGDOCHES INC	9958	2
RN102528197	BIGLER LAND LLC	7278	2
RN100216779	DAL-TILE CORPORATION	18330	2
RN104262704	AKZO NOBEL POLYMER CHEMICALS LLC	21865	2
RN102456597	THE GOODYEAR TIRE & RUBBER COMPANY	40933	2
RN100217306	EBAA IRON INC	664	2
RN100542828	ZEE MANUFACTURING LTD	43104	2
RN100215615	CHEVRON PHILLIPS CHEMICAL COMPANY LP	583A	2
RN100542562	LEEDO MANUFACTURING CO LP	77410	2
RN102540754	PPG INDUSTRIES INC	1862A	2
RN100214824	PLAINS PIPELINE LP	72712	2
RN101059673	FLINT HILLS RESOURCES LP	19079	2
RN100226125	MOTIVA ENTERPRISES LLC	26638	2
RN101058733	FLINT HILLS RESOURCES LP	19082	2
RN100222744	FLINT HILLS RESOURCES LP	6606	2
RN100218197	THE SHERWIN-WILLIAMS COMPANY	74886	2
RN101973782	PLAINS PIPELINE LP	73357	2
RN100519651	MOTIVA ENTERPRISES LLC	1285	3
RN100561182	CB&I CONSTRUCTORS INC	34184	3
RN102186129	MAGELLAN PIPELINE TERMINALS LP	70042	3
RN100214824	PLAINS PIPELINE LP	72762	3
RN100519214	MOTIVA ENTERPRISES LLC	19035	3
RN100214949	NUSTAR LOGISTICS LP	50595	3
RN104095435	PRAXAIR INC	19297	3
RN100216753	CAMPBELL SOUP SUPPLY COMPANY LLC	56233	3
RN101162774	TRANE US INC	47724	3
RN100519636	MOTIVA ENTERPRISES LLC	31978	3
RN100216548	MOTIVA ENTERPRISES LLC	37200	3
RN100918754	CHEMICALS INCORPORATED	50478	3
RN102530268	MOTIVA ENTERPRISES LLC	48662	3
RN100225739	EXPLORER PIPELINE COMPANY	56218	3
RN100219591	TE PRODUCTS PIPELINE COMPANY LP	88	3
RN102183449	MAGELLAN PIPELINE TERMINALS LP	1296A	3
RN100225671	850 PINE STREET INC	56685	3
RN100213545	NCI GROUP INC	17210	3
RN103179289	NUSTAR LOGISTICS LP	54984	3
RN100219161	MITSUBISHI CATERPILLAR FORKLIFT AMERICA INC	22104	3
RN100219260	NOBLE PETRO INC	1889A	3
RN101950616	PLAINS PIPELINE LP	73458	3
RN103219127	NACOGDOCHES POWER LLC	77679	3
RN100210756	US DEPARTMENT OF ENERGY	84802	3
RN102411352	BAE SYSTEMS TACTICAL VEHICLE SYSTEMS LP	21548	3
RN100209337	UT HEALTH SCIENCE CENTER SAN ANTONIO	48056	3



**Attachment A to Audit Agreement**  
**Tiered Ranking of Texas Flexible Permits**

<b>RN#</b>	<b>Company Name</b>	<b>Permit Number</b>	<b>Tier</b>
RN100673136	REICHHOLD INC	77738	3
RN102305943	PLAINS PIPELINE LP	72761	3
RN101296507	PLAINS PIPELINE LP	72760	3
RN102874419	STEWART & STEVENSON SERVICES INC	53418	3
RN102027174	SHELL PIPELINE COMPANY LP	56342	3
RN102341880	UNIVAR USA INC	70652	4
RN102553336	EXXONMOBIL OIL CORPORATION	49131	4
RN100215128	WEST TEXAS GULF PIPE LINE COMPANY	72661	4
RN100219716	SHELL PIPELINE COMPANY LP	56253	4
RN104517826	PORT ARTHUR LNG LP	74485	4
RN100214824	PLAINS PIPELINE LP	72763	4
RN104248141	NUSTAR TERMINALS PARTNERS TX LP	54985	4
RN104620083	INEOS AMERICAS LLC	82132	4
RN105366934	FLINT HILLS RESOURCES LP	83149	4
RN104477161	EI DU PONT DE NEMOURS AND COMPANY	76165	4
RN100813492	MAGELLAN PIPELINE TERMINALS LP	73439	4
RN105156707	TOYO INK MFG AMERICA LLC	81030	4
RN100242973	GARDNER GLASS PRODUCTS INC	18495	4
RN101988541	PLAINS PIPELINE LP	73383	4
RN100683010	GENERAL ALUMINUM COMPANY OF TEXAS LP	6081	4
RN100212349	TEPPCO CRUDE PIPELINE LLC	73416	4
RN102194271	CHEVRON PRODUCTS COMPANY	78189	4
RN102904794	CHEMICAL RESEARCH & LICENSING COMPANY	32468	4
RN104314273	LONESTAR FIBERGLASS POOLS LLC	72302	4
RN101466159	TEX-TRUDE LP	49230	4
RN100812502	RIO GRANDE MINING COMPANY	80987	4
RN101073013	CITGO PETROLEUM CORPORATION	56151	4
RN100224088	CITGO PIPELINE COMPANY	56121	4
RN100220011	MAGELLAN PIPELINE COMPANY LP	56340	4
RN101388163	RANGEN INC	21318	4
RN104277793	FORBO ADHESIVES LLC	74599	4
RN102575073	PLAINS PIPELINE LP	72984	4
RN104222278	COBISA-GREENVILLE LIMITED PARTNERSHIP	71739	4
RN100767714	THE WW HENRY COMPANY LP	20513	4
RN104136700	SANDY CREEK ENERGY ASSOCIATES LP	70861	4
RN102459765	PLAINS PIPELINE LP	72985	4
RN104156526	PLAINS PIPELINE LP	73368	4

**Attachment B to Audit Agreement**  
***Model Consent Agreement and Final Order (CAFO)***  
***Texas Flexible Permit Audit Program***

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

IN THE MATTER OF:	§	
	§	
[NAME OF AUDIT PARTICIPANT]	§	EPA DOCKET NO. CAA-06-2010-xxxx
[NAME OF CITY, TEXAS]	§	
	§	
	§	COMPLAINT AND
	§	CONSENT AGREEMENT AND
	§	FINAL ORDER
	§	

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The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant), and [Name of Audit Participant, Name of City, Texas](Respondent) in the above referenced proceeding, hereby agree to resolve this matter through the issuance of this Complaint and Consent Agreement and Final Order (Complaint and CAFO).

**I. PRELIMINARY STATEMENT**

1. This proceeding is for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended (CAA), 42 U.S.C. § 7413(d), and for additional terms of settlement as agreed to by Respondent. This proceeding was instituted by the issuance of a Complaint and Notice of Opportunity for Hearing (Complaint) incorporated herein, and is simultaneously concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.34.

2. The Complaint alleges [Name of Audit Participant] (abbreviated name) violated the CAA and specific requirements promulgated thereunder at its [Name of Facility or Plant] located in [Name of City, County, Texas] (Facility).

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in this Complaint.

4. Respondent consents to the issuance of this CAFO hereinafter recited and consents to the assessment and payment of any stated civil penalty in the amount and by the method set out in this CAFO; in addition, Respondent agrees to perform the addition terms of settlement set forth in Paragraphs 28 through 42 as a condition precedent for the release and covenant not to sue provisions set forth in Paragraph 43 through 45 below.

5. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein, and Respondent waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

6. This CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this Complaint; furthermore, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this Complaint.

7. Nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

8. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

9. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. Respondent is a [insert nature of business, e.g., corporation, partnership, etc.] doing business in the State of Texas and is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

11. At all relevant times, Respondent owned and operated a [insert type of facility, e.g., refinery, chemical manufacturing facility, etc.] located in [insert name of city], Texas.

12. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, Texas has submitted and EPA has approved a state implementation plan (Texas SIP) which contains, inter alia, the group of control strategies and regulations designed to attain and maintain the national ambient air quality standards (NAAQS) for criteria air pollutants.

13. The Texas SIP includes an air permitting program for new and modified sources of air pollution which provides various mechanisms for sources to obtain authorizations for their air emissions. In 1994, Texas created a flexible air permit program (Texas Flexible Permit Program), found at 30 TAC Chapter 116, Subchapter G, and submitted that program to EPA for approval as a revision to the Texas SIP. However, EPA has not approved the Texas Flexible Permit Program into the Texas SIP, and sources remain subject to the federally-approved Texas SIP and the mechanisms contained therein to effect changes to their operations that may effect air emissions.

14. Pursuant to Title V of the Act, 42 U.S.C. §§ 7661-7661f, and the implementing regulations at 40 C.F.R. Part 70, EPA has approved an air operating permits program for major and area sources of air pollution in Texas (Texas Title V program). 30 TAC § 122.132(e)(2) of the Texas Title V program requires major sources to submit permit applications that identify all applicable requirements, including the requirements of the Texas SIP. See also 40 C.F.R. § 70.5 (a), (c). Requirements imposed by state-only programs, such as the Texas Flexible Permit Program which is not part of the Texas SIP, should be designated as not being federally enforceable in a source's Title V permit, as required by 30 TAC § 122.142(b)(2) and 40 C.F.R. § 70.6(b)(2).

Count 1

15. On or about **[INSERT date of issuance of Flexible Permit]**, Respondent was issued **[Permit No. xxxxxxxx]**, an air permit issued under the Texas Flexible Permits Program. Permit No. **xxxxxxx** covers various emission units at Respondent's facility, including **[Insert general description of the emission units covered by Flexible permit, identifying each emission point number (EPN) covered by the flexible permit]**.

16. Under the flexible permit referenced above, Respondent effected changes at the [name of facility] which altered the nature and quantity of air emissions authorized from emission units covered by the flexible permit; these emission units were either previously authorized by permits issued under the federally-approved Texas SIP or had never been authorized under the federally-approved Texas SIP.

17. Respondent failed to seek and obtain authorization(s) under the federally-approved Texas SIP for the unit-specific changes in emission rates/limitations and other requirements contained in their flexible permit, Permit No. **xxxxxxx**.

18. Therefore, Respondent violated the requirements of 30 TAC Chapter 116 of the federally-approved Texas SIP, approved by EPA under Section 110 of the Act, 42 U.S.C.

§ 7410. On **[Insert date]**, notice of these violations was provided to Respondent and Texas, as required by Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1).

Count 2

19. On **[date of issuance]**, Respondent was issued an air operating permit, Permit No. O-xxxxx, a permit issued under the EPA-approved Texas Title V program.

20. Permit No. O-xxxx fails to designate the requirements of Respondent's flexible permit, Permit No. xxxxxx, as not being federally enforceable and fails to include all applicable requirements, such as those requirements contained in permits issued under the federally-approved Texas SIP.

21. Respondent's failure to identify the terms and conditions of all permits issued under the federally-approved Texas SIP, as applicable requirements, in its Title V permit application constitutes a violation of 30 TAC § 122.132(e)(2) of the federally-approved Texas Title V program, Title V of the Act and the requirements of 40 C.F.R. § 70.5.

### **III. TERMS OF SETTLEMENT**

#### **A. CIVIL PENALTY**

22. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d), which authorizes EPA to assess a civil penalty of up to twenty-five thousand dollars (\$25,000)<sup>1</sup> per day for each violation of the Act. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, specific facts and equities, litigation risks, and other factors as justice may require, INCLUDING Respondent's agreement to perform the additional terms of settlement set forth below, it is ORDERED that Respondent be assessed a civil penalty in the amount of XXXXXXXXXXXXX dollars (\$xxxxxxx).

23. Within thirty (30) days of Respondent's receipt of this fully executed CAFO, Respondent shall pay xxxxxxxxxxxx dollars (\$xxxxxxx) by cashier's or certified check made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of four (4) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; or On Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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<sup>1</sup> The Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701 provides for increases in the statutory penalty provisions (\$25,000) cited in the Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991 (CAA Penalty Policy). It provides for up to \$25,000 per day of violation for violations occurring on or before January 30, 1997; up to \$27,500 per day for each such violation occurring after January 30, 1997 through March 15, 2004; up to \$32,500 per day for each such violation occurring after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009.

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
(314) 418-4087

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"  
phone number (412) 234-4381.

For On-line Payment:

[WWW.PAY.GOV](http://WWW.PAY.GOV)  
Enter sfo 1.1 in search field  
Open form and complete required fields.

PLEASE

NOTE: Docket Number CAA-06-2010-xxxx shall be clearly typed on the check to ensure proper credit. The check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and transmittal letter to the following:



Steve Thompson (6EN-AA)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Region 6 Hearing Clerk  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

24. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

25. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

26. EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90)

days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

27. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including, but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

## **B. ADDITIONAL TERMS OF SETTLEMENT**

### **Community Projects**

28. **[Insert language describing the community project(s) (CPs) in general and referencing the approved final CPs specifically described in Attachment A to the CAFO]**

29. The Respondent shall submit a Community Project Completion Report (Completion Report) to EPA within thirty (30) days of the completion of the community projects described in Paragraph 28 above and Attachment A to this CAFO. The Completion Report shall contain the following information:

- A. A detailed description of the community project(s) as implemented;
- B. A description of any operating or logistical problems encountered and the solutions thereto;
- C. Itemized final costs with copies of receipts for all expenditures;

D. Certification that the community projects have been fully implemented pursuant to the provisions of this CAFO; and

E. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of the community projects.

30. In itemizing its costs in the Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible costs. For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

31. The Respondent shall submit the following certification in the Completion Report, signed by a responsible corporate official:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

32. After receipt of the Completion Report described in Paragraph 29 above, EPA will notify the Respondent, in writing, regarding: (a) any deficiencies in the Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily.

33. If EPA elects to exercise option (a) in Paragraph 32 above, i.e., if the Completion Report is determined to be deficient but EPA has not yet made a final determination about the

adequacy of completion itself, EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 32 within ten (10) days of receipt of such notification. EPA and the Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the community projects to Respondent, which decision shall be final and binding upon the Respondent. The Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event the community projects are not completed as contemplated herein, as determined by EPA, the conditions precedent to the release and covenant not to sue provisions set forth in Paragraph 43 herein shall be deemed not to have been satisfied and Respondent is not afforded the protections provided by those provisions.

### **Emission Unit Requirements**

34. Respondent agrees to immediately comply with all emission limitations/standards and monitoring, recordkeeping, and reporting requirements set forth in the Emission Unit Requirements Table, except as provided for in this paragraph. For those emission units identified in Attachment B that require additional emission authorizations under the federally-approved Texas SIP and/or additional monitoring, recordkeeping, or reporting requirements to ensure continuous compliance with emission limitations or standards, a written compliance schedule has been developed as discussed in Paragraph 35 below. For those emission units identified in Attachment B that cannot achieve immediate compliance, the written compliance

schedule discussed in Paragraph 35 below includes provisions sufficient to bring those units into compliance as expeditiously as possible.

### **Application for Title V Permit Revision**

[Preamble- not be included in final CAFO - This section relates to the Compliance Schedule which will form the basis for effecting the changes identified by the audit report and the Emission Unit Requirements Table (Attachment B) necessary to bring all emission units covered by Respondent's flexible permit back into compliance with the requirements of the CAA and the federally-approved Texas SIP. The Compliance Schedule will be submitted by the Respondent to the permitting authority, as part of an application for a Title V revision request, and it will include, at a minimum, a detailed schedule meeting the requirements of 30 TAC § 122.132 and 40 C.F.R. § 70.5(c)(8), to obtain full emission requirements for all emission units regulated under Respondent's flexible permit, accomplished *through applications for amendments to existing or new authorizations under the federally-approved Texas SIP, otherwise known as the appropriate federally-enforceable non-Title V permits*). In addition, a compliance certification will be required to be submitted with the application for the Title V permit(s) revision(s)]

35. Within thirty (30) days of the effective date of this CAFO, Respondent agrees to submit an application to the appropriate permitting authority for a Title V permit revision to incorporate the requirements of the Compliance Schedule, attached as Attachment C to this CAFO and incorporated herein by reference. The Compliance Schedule is designed to be at least as stringent as the requirements set for in 40 C.F.R. § 70.5(c)(8) and 30 TAC § 122.132 of the federally-approved Texas Title V operating permits program.

36. Respondent agrees to comply with the requirements of the Compliance Schedule set forth in Attachment C to this CAFO until the Compliance Schedule is approved into Respondent's Title V permit(s) and the revised Title V permit(s) becomes effective, after which time Respondent will comply with the Compliance Schedule in the effective revised Title V permit.

37. In addition to the Compliance Schedule referenced above, Respondent's application for the Title V permit(s) revision shall include an updated compliance certification that meets the requirements of 30 TAC § 122.165 and 40 C.F.R. § 70.5(c)(9).

38. Nothing in the Compliance Schedule or this CAFO shall be interpreted to limit the authority to impose more stringent requirements in Respondent's Title V permit(s) or in Respondent's underlying authorizations or requirements of the Texas SIP, including the appropriate federally-enforceable non-Title V permit(s).

### **Other Settlement Terms**

39. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

40. Any public statement, oral or written, in print, film, or other media, made by the Respondent making reference to the Community Project(s) shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the federal CAA."

41. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any Community Project undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from

developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

42. This document is a “Final Order” as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of “prior such violations.”

#### **IV. RELEASE AND COVENANT NOT TO SUE**

43. In consideration of Respondent's obligations under this CAFO and subject to the limitations and conditions herein, EPA releases and covenants not to sue Respondent, with respect to the emission units listed in the Emission Unit Requirements Table in Attachment B to this CAFO, for the civil violations alleged herein that may have occurred prior to the effective date of this CAFO.

44. The release and covenant not to sue described above does not extend to any other requirements of the Act, including but not limited to requirements that relate to emission units at Respondent’s facility which are not listed in the Emission Unit Requirements Table (Attachment B to this CAFO).

45. The release and covenant not to sue described herein covers Respondent’s liability for civil violations with respect to an emission unit listed in the Emission Unit Requirements Table (Attachment B to this CAFO) if, and only if, Respondent complies with all terms and conditions of this CAFO, including the receipt of a revised and effective Title V permit incorporating the Compliance Schedule set forth in this CAFO.

## **V. RETENTION OF ENFORCEMENT RIGHTS**

46. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of any other Federal laws, regulations, statutes, or permitting programs not the subject of this action.

47. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

## **VI. COSTS**

48. Each party shall bear its own costs and attorneys fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Authorized party: \_\_\_\_\_  
Title of Authorized Party: \_\_\_\_\_  
[Name of Audit Participant]

FOR THE COMPLAINANT:

Date: \_\_\_\_\_

\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division



## FINAL ORDER

Pursuant to Section 113(d) of the CAA (Act), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. The successful completion of the terms of settlement set forth in Paragraphs 28 through 42 are conditions precedent to the release and covenant not to sue provisions set forth in Paragraphs 43 through 45 of the this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as they relate to the assessment of civil penalties as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated \_\_\_\_\_

\_\_\_\_\_  
Michael Barra  
Regional Judicial Officer  
U.S. EPA, Region 6

### CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order (“Complaint and CAFO”) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: \_\_\_\_\_

Name of authorized party: \_\_\_\_\_

Title of authorized party: \_\_\_\_\_

[Name of Audit Participant]

Address:

\_\_\_\_\_

U.S. EPA, Region 6  
Dallas, Texas