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WESTERN DISTRICT OF LOUISIANA
SHREVEPORT, LOUISIANA

BY: _____



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES BALLENGEE,
LISBON PROCESSING, L.L.C.,
and LISBON REFINERY J.V., L.L.C.,

Defendants,

STATE OF LOUISIANA,
through the DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff-Intervenor,

v.

LISBON PROCESSING, L.L.C.,
and LISBON REFINERY J.V., L.L.C.

Defendants.

Civil Action No. 5:11-cv-01781

Judge Donald E. Walter

Magistrate Judge Mark L. Hornsby

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint in this action on October 5, 2011, alleging that Defendants James Ballengee, Lisbon Processing, L.L.C., and Lisbon Refinery J.V., L.L.C. (“Defendants”) have violated Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b); Section 311(b) of the Clean Water Act, 33 U.S.C. § 1321(b); Section 3008(a) of the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. § 6928(a); and the regulations promulgated pursuant to these statutes;

WHEREAS, Plaintiff the State of Louisiana, through the Louisiana Department of Environmental Quality, filed a Complaint in Intervention in this action on May 16, 2012, alleging that Defendants Lisbon Processing, L.L.C. and Lisbon Refinery J.V., L.L.C. have violated Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b); Section 311(b) of the Clean Water Act, 33 U.S.C. § 1321(b); Section 3008(a) of the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. § 6928(a); the Louisiana Environmental Quality Act, LSA-R.S.30:2001 *et seq.*; and the regulations promulgated pursuant to these statutes;

WHEREAS, Defendants have filed answers to the United States Complaint and the Louisiana Complaint denying the violations alleged in those complaints;

WHEREAS, all violations alleged in the Complaints relate to a petroleum storage facility located at 18647 Highway 2, Lisbon, Claiborne Parish, Louisiana, 71048 (the “Facility”);

WHEREAS, the Facility comprises approximately 36 acres of land and is split by Louisiana State Highway 2 running east to west, with most of the former and current operations residing in the southern portion of the property, and is bounded by a wooded lot to the north, a

wooded lot and Tenneco Road to the east, a wooded lot and an unnamed tributary of Five Mile Creek (“West Fork tributary”) to the west, and the South Fork tributary to the south, and;

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

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367; Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b); Section 311(b)(7)(E) of the Clean Water Act, 33 U.S.C. § 1321(b)(7)(E); and Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), and over the Parties.

2. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1395(a), as well as Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), Section 311(b)(7)(E) of the Clean Water Act, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), because the alleged violations occurred in, and Defendants do business and/or reside in, this judicial district.

3. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court’s jurisdiction over this Decree, any such action to enforce this Decree, and over Defendants, and consent to venue in this judicial district.

4. For purposes of this Consent Decree, Defendants agree that the Complaints state claims upon which relief may be granted.

II. APPLICABILITY

5. The obligations of this Consent Decree apply to and are binding upon the United States, the State of Louisiana, Defendants, and any successors, assigns, or other entities or persons otherwise bound by law.

6. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 6, the United States Attorney for the Western District of Louisiana, United States Department of Justice, and the State of Louisiana in accordance with Section XII of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

7. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

8. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the Clean Air Act, Clean Water Act, the Resource Conservation and Recovery Act, or the Louisiana Environmental Quality Act (“the Acts”) or in regulations promulgated pursuant to the Acts shall have the meanings assigned to them in the Acts or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. “Complaints” shall mean the Complaint filed by the United States and the Complaint filed by the State of Louisiana in this action, collectively.

b. “Consent Decree” or “Decree” shall mean this Decree;

c. “Court” shall mean the United States District Court for the Western District of Louisiana;

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

e. “Defendants” shall mean James Ballengee, Lisbon Processing, L.L.C., and Lisbon Refinery J.V., L.L.C.;

f. “Effective Date” shall have the definition provided in Section XIII;

g. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

- h. "Facility" shall mean the petroleum storage facility located at 18647 Highway 2, Lisbon, Claiborne Parish, Louisiana, 71048;
- i. "Financial Assurance" shall mean the instruments described in Paragraphs 13-14 of this Decree;
- j. "LDEQ" shall mean the Louisiana Department of Environmental Quality;
- k. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;
- l. "Parties" shall mean the United States, the State of Louisiana, and Defendants;
- m. "Plaintiffs" shall mean the United States and the State of Louisiana;
- n. "Section" shall mean a portion of this Decree identified by a roman numeral;
- o. "State" shall mean the State of Louisiana, by and through the Louisiana Department of Environmental Quality;
- p. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

10. Within 30 days after the Effective date of this Consent Decree, Defendants shall pay the total sum of \$130,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

11. Defendants shall pay the civil penalty as follows:

- a. \$65,000, plus interest as specified in Paragraph 10, shall be paid to by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendants, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Louisiana.

At the time of payment, Defendants shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Ballengee et al. and that \$32,500 of the payment shall be directed to the Oil Spill Liability Trust Fund. The transmittal letter shall reference the Western District of Louisiana civil action number 5:11-CV-01781 and DOJ case number 90-5-2-1-09242. The transmittal letter shall be submitted to the United States in accordance with Section XII of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

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

b. \$65,000, plus interest as specified in Paragraph 10, shall be paid to:

Department of Environmental Quality
Accountant Administrator
Financial Services Division
Post Office Box 4303
Baton Rouge, Louisiana 70821-4303.

12. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating their federal income taxes.

V. COMPLIANCE REQUIREMENTS

A. Financial Assurance

Stipulated Penalties

13. Within fifteen (15) days of the date of lodging of this Consent Decree, Defendants shall deliver to the United States and the State an irrevocable letter of credit in the amount of \$100,000. Such letter of credit shall be issued by a bank acceptable to the United States and the State on terms and conditions reasonably acceptable to the United States and the State. The letter of credit shall provide that the United States or the State may draw on up to the entire amount of the letter of credit by providing a certified copy of a granted Motion of the United States or the State that a stipulated penalty has been determined to be owing to the United States or the State of Louisiana pursuant to the applicable dispute resolution procedure and standard of review set forth in Section VIII of the Consent Decree.

Compliance Requirements

14. Within fifteen (15) days of the date of lodging of this Consent Decree, Defendants shall deliver to the State an irrevocable letter of credit in the amount of \$900,000. Such letter of credit shall be issued by a bank acceptable to the United States and the State on terms and conditions reasonably acceptable to the United States and the State. The letter of credit shall provide that the State may draw on up to the entire amount of the letter of credit for any cost associated with the completion of any requirement of Section V of this Consent Decree by providing a certified copy of a granted Motion of the State finding that any requirement of Section V of this Consent Decree has been breached, pursuant to the applicable dispute resolution procedure and standard of review set forth in Section VIII of the Consent Decree.

B. Air Emissions Controls

15. In the event Defendants re-commence the use of the petroleum storage tanks located at the Facility, Defendants shall install and operate the air pollution control system set forth in LDEQ Air Permit No. 0620-00002-08, issued on May 30, 2012.

16. In the event Defendants re-commence the use of the petroleum storage tanks located at the Facility, Defendants shall perform a compliance audit as described in LDEQ Air Permit No. 0620-00002-08, as issued on May 30, 2012. Such compliance audit shall be performed by an environmental consulting firm that has not previously provided services to any Defendant or any company controlled by any Defendant, and such work shall be performed by a licensed professional engineer with prior experience conducting audits of the type described in LDEQ Air Permit No. 0620-00002-08. Defendants shall obtain EPA's approval of the environmental consulting firm before the commencement of the compliance audit. EPA shall withhold approval only if the proposed environmental consulting firm does not conform to the requirements of this paragraph.

17. No later than 30 days from the completion of the compliance audit, Defendants shall submit to EPA and LDEQ, in accordance with Section XII (Notices), a copy of the completed compliance audit.

18. No later than 90 days from the Date of Entry of this Consent Decree, Defendants shall remove piping to out-of-service and unpermitted petroleum storage tanks at the Facility. Defendant may elect to remove only a portion of the piping to each tank, but in such case the portion of piping removed shall be not less than ten (10) feet in length and blinds shall be welded to all open ends of any remaining piping. Out-of-service and unpermitted tanks shall be blinded and clearly marked as "Out-of-Service" and shall not be used by Facility personnel. Within 30

days of completing the work required under this Paragraph, Defendants shall submit to EPA and LDEQ, in accordance with Section XII (Notices), documentation that this work was completed (such documentation may consist of annotated photographs of the piping removed, the blinding, and the markings on the tanks) as well as a certification, signed by an appropriate corporate representative, that the work was completed.

C. Waste Removal and Compliance with Standing Orders

19. No later than 90 days from the Date of Entry of this Consent Decree, Defendants shall demonstrate, through a signed compliance certification from an appropriate corporate representative, that the remedial work described in Paragraphs 19.a through 19.c of this Consent Decree has been completed:

- a. All roll-off boxes at the Facility containing wastes shall be disposed of in compliance with all pertinent federal and state regulations relating to the handling and disposal of wastes. The three roll-off boxes referenced in Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. HE-CN-08-0583, issued by LDEQ on December 30, 2008, for the removal of hazardous waste containers improperly stored at the Facility, shall be disposed of in compliance with that order.
- b. All hazardous wastes shall be removed from Tank K at the Facility and disposed of in compliance with all pertinent federal and state regulations relating to the handling and disposal of wastes and in accordance with Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No.

HE-CN-08-0483, issued by LDEQ on December 30, 2008, for the removal of hazardous waste from Tank K-11.

- c. Compliance with Consent Order, Docket No. 513,819, entered July 30, 2007, in the 1st Judicial District Court of Louisiana, for the removal of materials from the Facility's processing tanks.

20. Within 30 days of removing the hazardous wastes from the unpermitted storage areas, Defendants shall submit to EPA and LDEQ, in accordance with Section XII (Notices) of this Consent Decree, records of proper transport and disposal of the hazardous wastes.

21. Within 60 days of removing the hazardous wastes from the unpermitted storage areas described in the Compliance Orders listed under Paragraph 19 of this Consent Decree, Defendants shall submit to LDEQ, in accordance with Section XII (Notices) of this Consent Decree, a plan for approval to identify and remediate soils impacted by the unpermitted storage of hazardous waste, which shall include a timeframe for such remedial action.

D. Monitoring Well Installation and Maintenance

22. Defendants shall, no later than 60 days from the Date of Entry of this Consent Decree, submit to LDEQ for approval, in accordance with Section XII (Notices) of this Decree, a plan detailing the proposed locations and sampling protocol for ten (10) ground water monitoring wells. At a minimum, the plan shall include:

- a. a timeline for monitoring well installation;
- b. a map or other visual representation detailing the proposed well locations and the direction of groundwater flow under the facility;
- c. a sampling and reporting protocol.

E. Oil Spill Prevention

23. If any petroleum storage tank located at the Facility is not Permanently Closed, or in the event that any petroleum storage tank at the facility is re-opened, Defendants shall develop, submit, and implement a Spill Prevention Control and Countermeasure Plan (“SPCC Plan”) and Facility Response Plan in compliance with the requirements for onshore facilities listed at 40 C.F.R. Part 112, prior to the commencement of operations.

F. Approval of Deliverables/Implementation of Plans

24. After review of any plan that is required to be submitted pursuant to this Consent Decree, LDEQ (or, for SPCC Plans and Federal Response Plans submitted pursuant to Paragraph 23, EPA) shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission.

25. If the submission is approved pursuant to Paragraph 24.a, Defendants shall take all actions required by the plan, in accordance with the schedules and requirements of the plan as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 24.b or .c, Defendants shall, upon written direction from LDEQ (or, for SPCC Plans and Federal Response Plans submitted pursuant to Paragraph 23, EPA), take all actions required by the approved plan, report, or other item that LDEQ/EPA determines are technically severable from any disapproved portions, subject to Defendants’ right to dispute only the specified conditions or the disapproved portions, under Section VIII of this Decree (Dispute Resolution).

26. If the submission is disapproved in whole or in part pursuant to Paragraph 24.c or d, Defendants shall, within 45 days or such other time as the Parties agree to in writing, correct

all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendants shall proceed in accordance with the preceding Paragraph.

27. Any stipulated penalties applicable to the original submission, as provided in Section VII of this Decree, shall accrue during the 45-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

28. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, LDEQ (or, for SPCC Plans and Federal Response Plans submitted pursuant to Paragraph 23, EPA) may again require Defendants to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct those deficiencies, subject to Defendants' right to invoke Dispute Resolution and the right of LDEQ and/or EPA to seek stipulated penalties as provided in the preceding Paragraphs.

G. Reporting

29. Current State Reporting. Defendants shall submit to EPA, in accordance with Section XII (Notices) of this Decree, copies of all reports and plans submitted to LDEQ and relating to the Facility.

30. Immediate Threat to Public Health, Welfare, or the Environment. Whenever any violation of this Consent Decree or any other event affecting Defendants' performance under this Decree, or the performance of the Facility, may pose an immediate threat to the public health or

welfare or the environment, the Defendants shall notify EPA and LDEQ orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendants first knew of the violation or event. If the initial notification is oral, Defendants shall, as soon as possible, provide written notification in the form of electronic or facsimile transmission.

31. Violations of Law or Permit Requirements. Whenever Defendants become aware of any violation of federal or State law, or violation of any condition contained in any permit issued to the Facility, Defendant shall notify EPA and LDEQ orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after the Defendants first knew of the violation or event. If the initial notification is oral, Defendants shall, as soon as possible, provide written notification in the form of electronic or facsimile transmission.

32. Report Certification. Each report submitted by Defendants under this Section shall be signed by an official of the submitting party and include the following certification:

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

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

33. All reports shall be submitted to EPA and LDEQ in accordance with Section XII (Notices) of this Decree.

34. Other Reporting Obligations. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the Clean Air Act, Clean Water Act, the Resource Conservation and Recovery Act, the Louisiana Environmental Quality Act, or their implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

H. Permits

36. Where any compliance obligation under this Section requires Defendants to obtain a federal, state, or local permit or modification thereof or approval for the Facility, the Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The Defendants may seek relief under the provisions of Section VII of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

VI. STIPULATED PENALTIES

37. Defendants shall be liable for stipulated penalties to the United States and/or the State of Louisiana for violations of this Consent Decree as specified below, unless excused under Section VII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree,

according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

38. Late Payment of Civil Penalty

If Defendants fail to pay the civil penalty or penalties required to be paid under Section IV of this Decree (Civil Penalty) or the Financial Assurance described in Paragraphs 13-14 of this Decree when due, Defendants shall pay a stipulated penalty of \$1000 per Day to the Plaintiff or to each of the Plaintiffs to which a penalty payment is owed for each Day that the payment is late.

39. Failure to Dispose of Hazardous Wastes

If Defendants fail to dispose of the hazardous wastes as required by Paragraph 19 by the deadline specified in that paragraph, the following stipulated penalties shall accrue:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$750 to the United States and \$750 to the State	1st through 15th day
\$1,500 to the United States and \$1,500 to the State	16th through 30th day
\$4,000 to the United States and \$4,000 to the State	31st day and beyond.

40. Failure to Timely Submit and/or Implement Impacted Soil Plan or Ground Water Monitoring Plan

If Defendants fail to timely submit the plans described in Paragraphs 21 or 22 to LDEQ, fail to timely resubmit any portion of the plans rejected by LDEQ, and/or fail to timely implement the approved plans, including failure to provide reports to LDEQ and failure to post

any required notices, the following stipulated penalties, payable to the State, shall accrue per violation per day against the Defendant:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 15th day
\$1,500	16th through 30th day
\$3,000	31st day and beyond

41. Other Consent Decree Violations.

For each failure by Defendants to comply with any requirement of this Consent Decree not specifically referenced in Paragraphs 38 through 40 within the specified time schedules established by this Decree, the following stipulated penalties shall accrue per violation per day:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$500 to the United States and \$500 to the State	1st through 15th day
\$1,000 to the United States and \$1,000 to the State	16th through 30th day
\$2,000 to the United States and \$,2000 to the State	31st day and beyond

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

43. Defendants are jointly and severally liable for any stipulated penalties accrued under this Consent Decree except that James Ballengee's liability for stipulated penalties shall be limited to the full amount of the Financial Assurance described in Paragraphs 13-14 of this Decree if such Financial Assurance is timely posted.

44. Defendants shall pay any stipulated penalty within 30 Days of receiving a written demand by either Plaintiff. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

45. Either Plaintiff may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to it under this Consent Decree.

46. Stipulated penalties shall continue to accrue as provided in Paragraph 42 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA or LDEQ that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest specified in Paragraph 48, to the United States or the State within 30 Days of the effective date of the agreement or the receipt of EPA's or LDEQ's decision or order.

b. If the dispute is appealed to the Court and the United States or LDEQ prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest as specified in Paragraph 48, within 60 Days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

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

47. Defendants shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 11.a, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. Defendants shall pay stipulated penalties owing to the State by the

manner set forth in Paragraph 11.b, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

48. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

49. Subject to the provisions of Section X of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and the State for Defendants' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, or Louisiana Environmental Quality Act, Defendants shall be allowed a credit, for any stipulated penalties paid, against statutory penalties imposed for such violation.

VII. FORCE MAJEURE

50. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it

is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

51. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall provide notice orally or by electronic or facsimile transmission to EPA and LDEQ, within 72 hours of when Defendants first knew that the event might cause a delay. Within seven days thereafter, Defendants shall provide in writing to EPA and LDEQ an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

52. If EPA, after a reasonable opportunity for review and comment by the LDEQ, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for

performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

53. If EPA, after a reasonable opportunity for review and comment by LDEQ, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.

54. If Defendants elect to invoke the dispute resolution procedures set forth in Section VIII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 50 and 51, above. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA, LDEQ, and the Court.

VIII. DISPUTE RESOLUTION

55. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute

under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

56. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants sends the United States and LDEQ a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States (or, in the event of a dispute regarding the submission or implementation of a plan pursuant to Paragraphs 21 or 22, LDEQ) shall be considered binding unless, within 10 Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

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

58. The United States (or, in the event of a dispute regarding the submission or implementation of a plan pursuant to Paragraphs 21 or 22, LDEQ) shall serve its Statement of Position within 45 Days of receipt of Defendants' Statement of Position. The United States'/ LDEQ's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by

the United States/LDEQ. The United States'/LDEQ's Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

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

60. The United States (or, in the event of a dispute regarding the submission or implementation of a plan pursuant to Paragraphs 21 or 22, LDEQ) shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

61. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 56 or 57 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by LDEQ under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; the approval or disapproval of contractors; and all other disputes that are accorded review on the administrative record under applicable

principles of administrative law, Defendants shall have the burden of demonstrating, based on the administrative record, that the position of the United States or the State is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 56 or 57, Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

c. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 46. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VI (Stipulated Penalties).

IX. INFORMATION COLLECTION AND RETENTION

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

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States and/or LDEQ in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendants' compliance with this Consent Decree.

63. Upon request, Defendant shall provide EPA, LDEQ, or their authorized representatives splits of any samples taken by Defendants. Upon request, EPA and LDEQ shall provide Defendants splits of any samples taken by EPA or LDEQ.

64. Until five years after the termination of this Consent Decree, Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of their obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or LDEQ, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

65. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States and LDEQ at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or LDEQ, Defendants shall deliver any such documents, records, or other information to EPA. Defendants may assert that certain

documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

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

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

X. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

68. This Consent Decree resolves only the civil claims of the United States and the State for the violations alleged in the Complaints filed in this action through the date of lodging.

69. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 68.

This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Louisiana Environmental Quality Act, or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 68. The United States and the State reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

70. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Facility, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 68 of this Section.

71. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree,

warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Louisiana Environmental Quality Act, or with any other provisions of federal, State, or local laws, regulations, or permits.

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

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

XI. COSTS

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

XII. NOTICES

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

To the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division

U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-09242

AND

Director
Air, Toxics & Inspection Coordination Branch
U.S. Environmental Protection Agency – Region 6
1445 Ross Avenue – Suite 1200
Dallas, TX 75202-2733

Associate Director
Hazardous Waste Enforcement Branch
U.S. Environmental Protection Agency – Region 6
1445 Ross Avenue – Suite 1200
Dallas, TX 75202-2733

To EPA:

Director
Air, Toxics & Inspection Coordination Branch
U.S. Environmental Protection Agency – Region 6
1445 Ross Avenue – Suite 1200
Dallas, TX 75202-2733

Associate Director
Hazardous Waste Enforcement Branch
U.S. Environmental Protection Agency – Region 6
1445 Ross Avenue – Suite 1200
Dallas, TX 75202-2733

To the State of Louisiana:

Enforcement Division
Celena J. Cage, Administrator
Office of Environmental Compliance
Louisiana Department of Environmental Quality
P.O. Box 4312
Baton Rouge, LA 70821-4312

And for notices, reports or submissions under Paragraph 21 and 22:

Steven Archibald
Louisiana Department of Environmental Quality
Underground Storage Tank and Remediation Division
1823 Highway 546
West Monroe, Louisiana 71292-0442

To Defendants:

James Ballengee, Lisbon Processing, L.L.C.
and Lisbon Refinery J.V., L.L.C.
Attn: Julio E. Rios, II
15510 Wright Brothers Drive
Addison, TX 75001
Telephone: (214) 722-6960
Facsimile: (214) 722-6950

Thomas E. Balhoff
Roedel, Parsons, Koch, Blache, Balhoff & McCollister
8440 Jefferson Highway, Suite 301
Baton Rouge, LA 70809
Telephone: (225) 929-7033
Facsimile: (225) 928-4925

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

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

XIII. EFFECTIVE DATE

78. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIV. RETENTION OF JURISDICTION

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

XV. MODIFICATION

80. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

81. Any disputes concerning modification of this Decree shall be resolved pursuant to Section VIII of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 61, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVI. TERMINATION

82. After Defendants have fulfilled all requirements of Section V (Compliance Requirements) of this Decree, have thereafter maintained continuous satisfactory compliance with this Consent Decree and LDEQ Air Permit No. 0620-00002-08, as issued on May 30, 2012 for a period of five (5) years, and have paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendants may serve upon the United States and LDEQ a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

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

84. If the United States does not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section VIII of this Decree. However, Defendants shall not seek, under Paragraph 57, Dispute Resolution of any dispute regarding termination until 45 days after service of its Request for Termination.

XVII. PUBLIC PARTICIPATION

85. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The parties agree

and acknowledge that final approval by 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 the official journal of Claiborne Parish and opportunity for public comment, consideration of any comments, and concurrence by the Louisiana Attorney General. The United States and the State reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XVIII. SIGNATORIES/SERVICE

86. Each undersigned representative of each Defendant, the State of Louisiana, and the Deputy Section Chief for the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

87. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. The Parties agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree.

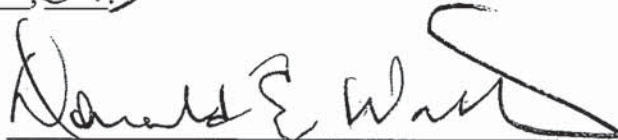
XIX. INTEGRATION

88. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XX. FINAL JUDGMENT

89. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the Parties. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this 3 day of Dec, 2013



THE HONORABLE DONALD E. WALTER
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF LOUISIANA