

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA,

Plaintiff,

THE STATE OF NEW JERSEY,

Plaintiff-Intervenor,

v.

BURLINGTON RESINS, INC.,  
doing business as  
COLORITE SPECIALTY RESINS,

Defendant.

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Civil Action No. 08-cv-4132 (RBK)

CONSENT DECREE

**COPY**

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## CONSENT DECREE

WHEREAS, Plaintiff, the United States of America (“Plaintiff” or “United States”), on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint alleging that Colorite Specialty Resins (“Colorite”) violated the following environmental statutes and their implementing regulations at its polyvinyl chloride manufacturing facility located at 116 Beverly Road, Burlington, New Jersey (“Facility”): the Clean Air Act (“CAA”), 42 U.S.C. § 7401, et seq.; the Clean Water Act (“CWA”), 33 U.S.C. § 1251, et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601, et seq.; and the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11001, et seq.

WHEREAS, EPA identified violations of the above mentioned statutes during an inspection that was conducted at the Facility in September 2004 in conjunction with representatives of the New Jersey Department of Environmental Protection (“NJDEP”);

WHEREAS, Colorite, EPA, and the State of New Jersey (“New Jersey”), on behalf of NJDEP, entered into discussions regarding reducing emissions of vinyl chloride from the Facility and ensuring compliance with federal and state environmental laws at the Facility;

WHEREAS, New Jersey has filed a Complaint in Intervention alleging similar violations under applicable state law and has joined this settlement as a signatory to this Consent Decree;

WHEREAS, the purpose of this Consent Decree is to achieve significant reductions in vinyl chloride emissions that will be environmentally beneficial, ensure compliance with applicable environmental laws and regulations, and resolve alleged violations at the Facility;

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

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

### I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355. The Complaint states a claim upon which relief can be granted against Colorite under Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Sections 309(b) and 311(b)(7)(e) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 17 of TSCA, 15 U.S.C. § 2616. The Complaint in Intervention filed by New Jersey similarly states claims upon which relief can be granted against Colorite. Venue lies in this District pursuant to 42 U.S.C. § 7413(b), 42 U.S.C. § 6928(a) and (g), 33 U.S.C. §§ 1319(b) and 1321(b)(7)(e), 42 U.S.C. § 11045(b)(3), 15 U.S.C. § 2616(a)(2), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a). For purposes of this Consent Decree or any action to enforce this Decree, Colorite consents to the Court's jurisdiction over any such action and this Decree, and over Colorite, and consents to venue in this judicial district.

### II. APPLICABILITY

2. The obligations of this Consent Decree apply to and are binding upon the United States, the State of New Jersey, and Colorite and any successors, assigns, or other entities or

persons otherwise bound by law.

3. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, will relieve Colorite of its obligations under this Consent Decree. At least 30 days prior to such transfer, Colorite 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 2, the United States Attorney for the District of New Jersey, the United States Department of Justice, and the State of New Jersey in accordance with Section IX 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.

4. Colorite shall provide to all Authorized Officials, supervisory employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree notice of the existence and general nature of this Decree and shall provide each such person with either: (i) written instructions as to how the requirements of this Decree affect his or her duties and responsibilities, or (ii) a copy of this Decree, or portions of the Decree that affect his or her duties and responsibilities. Colorite shall also advise each contractor whose work is affected by this Decree, other than those who only supply materials or equipment and do no installation or other work at the Facility, of the existence and general nature of the Decree. Colorite shall condition every contract within the scope of this Paragraph with each such contractor upon performance of the work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, Colorite will not raise as a defense

the failure of its directors, employees, agents or contractors to take actions necessary to comply with this Consent Decree.

### III. DEFINITIONS

6. Except as otherwise provided in this Consent Decree, terms used herein have the meanings assigned to them by the CAA, CWA, RCRA, TSCA, EPCRA, and the New Jersey Air Pollution Control Act, N.J.S.A. 26C:2C-1, et seq., and their implementing regulations.

Wherever the terms set forth below are used in this Consent Decree, the following definitions apply:

- a. “Authorized Official” shall mean a person meeting the criteria of 40 C.F.R. § 270.11.
- b. “Calendar Quarter” shall mean the three month period ending on March 31, June 30, September 30, and December 31.
- c. “Complaint” shall mean the complaint filed by the United States in this action. “Complaint in Intervention” shall mean the complaint in intervention filed by the State of New Jersey in this action. “Complaints” shall mean the Complaint and the Complaint in Intervention together.
- d. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto listed in Section XXV.
- e. “Continuous Emissions Monitoring System” or “CEMS” shall mean all of the equipment that may be required to meet the data acquisition and availability requirements of this Consent Decree, used to sample, condition (if applicable), analyze, and provide a written or

electronic record of emissions that will be retained according to Section XIV (Information Collection and Retention).

f. "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 runs until the close of business of the next business day.

g. "Defendant" shall mean Burlington Resins, Inc., d/b/a Colorite Specialty Resins or "Colorite".

h. "Effective Date," pursuant to Paragraph 112, shall mean the date on which this Consent Decree is entered by the Court after opportunity for public comment.

i. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

j. "Facility" shall mean Colorite's polyvinyl chloride ("PVC") manufacturing facility located at 116 Beverly Road, Burlington, New Jersey, and includes all land, buildings, equipment, machinery, fixtures, documents, data, chemicals, and wastes located within the boundaries of the real property owned or operated by Colorite at the above-referenced location.

k. "New Jersey" or "State" shall mean the State of New Jersey on behalf of NJDEP. "NJDEP" shall mean the New Jersey Department of Environmental Protection.

l. "NESHAP" shall mean the National Emission Standards for Hazardous Air Pollutants.



m. “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral.

n. “Parties” shall mean the United States, the State of New Jersey on behalf of NJDEP, and Colorite.

o. "Project Coordinator" shall mean (1) EPA Region 2 Branch Chief Kenneth Eng, when referring to the Suspension Monomer Recovery Improvement SEP and the VOC Dryer CEMS SEP, and (2) NJDEP Central Regional Office Manager – Air, when referring to the New Jersey State-Only Environmental Projects (“NJ Projects”) (Section VI).

p. “RVCM” shall mean residual vinyl chloride monomer.

q. “Section” shall mean a portion of this Consent Decree identified by a roman numeral.

r. “State-Only Claims” shall mean the claims alleged by the State of New Jersey in its Complaint in Intervention that are not also alleged by the United States in the Complaint.

s. “Title V Permit” shall mean the State of New Jersey Permit No. 65530-BOP050001 applicable to the Facility, issued pursuant to the New Jersey Title V Operating Permit Program, which EPA granted full approval on December 5, 2001 (66 Fed. Reg. 63168), as it may from time to time be amended or renewed, or subsequent approved permits.

t. “United States” shall mean the United States of America, acting on behalf of EPA.

u. “Vinyl Chloride NESHAP” shall mean the National Emission Standard for

Vinyl Chloride at 40 C.F.R. Part 61, Subpart F.

v. “VOC Dryer CEMS” shall mean a continuous emission monitoring system, with all its components, capable of accurately measuring vinyl chloride and vinyl acetate emissions from the dryer stack.

w. “VOC Incinerator CEMS” shall mean a continuous emission monitoring system, with all its components, capable of accurately measuring vinyl chloride and vinyl acetate emissions from the incinerator stack.

x. “Work” shall mean performance of the requirements set forth in Section V.

#### IV. CIVIL PENALTY

7. Colorite shall pay a total civil penalty of \$1,300,000.00, as set forth in Paragraphs 8 and 9.

8. Penalty Payment to the United States.

a. No later than 30 days after the Effective Date of this Consent Decree, Colorite shall pay to the United States the sum of \$400,000.00, together with interest accruing from June 1, 2008 through the date of payment, at the rate specified in 28 U.S.C. § 1961 determined as of the date of lodging.

b. No later than (i) 120 days after the Effective Date of this Consent Decree, or (ii) January 30, 2009, whichever date is earlier, Colorite shall pay to the United States the sum of \$260,000.00, together with interest accruing from the Effective Date of this Decree, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

c. Payment of the above sums shall be made by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with written instructions to be provided to Colorite following lodging of this Consent Decree. At the time of payment, Colorite shall send a copy of the EFT authorization form and the EFT transaction record together with transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v Colorite, and shall reference the civil action number and DOJ Case Number 90-5-2-1-08682. Any funds received after 11:00 p.m. (EST) will be credited on the next business day. Notice to the United States shall be made in accordance with Section IX of this Decree (Notices); by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and mail to:

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

9. Penalty Payment to the State of New Jersey.

a. No later than 30 days after the Effective Date of this Consent Decree, Colorite shall pay to New Jersey the sum of \$400,000.00, together with interest accruing from June 1, 2008 at the rate specified in 28 U.S.C. § 1961 determined as of the date of lodging.

b. No later than (i) 120 days after the Effective Date of this Consent Decree, or (ii) January 30, 2009, whichever date is earlier, Colorite shall pay to New Jersey the sum of \$240,000.00, together with interest accruing from the Effective Date of this Decree, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging. If Colorite spends more than \$20,000.00 in procuring, installing or otherwise implementing that portion of the VOC Incinerator CEMS project necessary to monitor and/or analyze PT-1 as required by Paragraph 43. c., the penalty

amount required by this sub-paragraph will be reduced dollar for dollar up to \$30,000.00 for any additional amount spent by Colorite above \$20,000.00.

c. Payment of the above sums to New Jersey shall be made payable to the New Jersey Department of Treasury and sent to:

Administrator of Air Compliance and Enforcement  
New Jersey Department of Environmental Protection  
P.O. Box 422  
Trenton, NJ 08625

10. Colorite shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section XI (Stipulated Penalties) in calculating its federal, state or local income tax.

## V. COMPLIANCE REQUIREMENTS

### Clean Air Act and EPCRA

11. Colorite shall comply with the following provisions of the Vinyl Chloride NESHAP as incorporated into its Title V permit: 40 C.F.R. § 61.64(a)(2)&(3), 40 C.F.R. § 61.64(d), 40 C.F.R. § 61.64(e)(1)(i)&(ii), 40 C.F.R. § 61.65(b)(3)(iv), 40 C.F.R. § 61.65(b)(8), 40 C.F.R. § 61.65(b)(9), 40 C.F.R. § 61.67(g)(3)&(5) and 40 C.F.R. § 61.70(c)(3). Colorite shall also comply with 40 C.F.R. § 372.30(a).

12. Suspension RVCM Limits. Colorite shall comply with the regulatory RVCM limit of 400 ppm daily as set forth in 40 C.F.R. § 61.64(e)(1)(ii) until it selects the reduced limit discussed below. By 225 days following the submittal of the SEP Completion Report for the Suspension Monomer Recovery Improvement SEP, pursuant to Paragraph 42, but in any event no later than two years from the Effective Date of this Consent Decree, Colorite shall notify EPA

and the State which of the following, for all suspension resins produced at the Facility, daily and 12-month rolling average RVCM limits will apply to all suspension resins produced at the Facility, and shall comply with such limits:

- (i) 350 parts-per-million (“ppm”) daily RVCM limit and 225 ppm 12-month rolling average RVCM limit;
- (ii) 325 ppm daily RVCM limit and 210 ppm 12-month rolling average RVCM limit;
- (iii) 300 ppm daily RVCM limit and 190 ppm 12-month rolling average RVCM limit;
- (iv) 275 ppm daily RVCM limit and 170 ppm 12-month rolling average RVCM limit; or
- (v) 250 ppm daily RVCM limit and 150 ppm 12-month rolling average RVCM limit.

13. For purposes of Paragraph 12:

- a. daily RVCM shall be the weighted average residual vinyl chloride concentration in all suspension resins produced at the Facility on a calendar day;
- b. 12-month rolling average RVCM shall be the weighted average vinyl chloride concentration in all suspension resins produced at the Facility in each calendar month during the 12-month averaging period;
- c. the first 12-month rolling average RVCM shall be calculated for the period beginning 12 months after the SEP is completed; thereafter, each successive 12-month

rolling average shall be calculated by including the next consecutive calendar month in the averaging period and dropping the first month from that period; and

d. RVCM concentration shall be measured using EPA Reference Method

107. On the date on which Colorite notifies EPA and the State of the daily and 12-month rolling average RVCM limits that will apply to all suspension resins produced at the Facility, Colorite shall pay a stipulated penalty in the following amount, depending on the limits chosen:

- (i) if Colorite selects the limit in Paragraph 12(i), it shall pay a stipulated penalty of \$200,000;
- (ii) if Colorite selects the limit in Paragraph 12(ii), it shall pay a stipulated penalty of \$150,000;
- (iii) if Colorite selects the limit in Paragraph 12(iii), it shall pay a stipulated penalty of \$100,000;
- (iv) if Colorite selects the limit in Paragraph 12(iv), it shall pay a stipulated penalty of \$50,000; and
- (v) if Colorite selects the limit in Paragraph 12(v), it shall pay no stipulated penalty.

e. The formula set forth in Paragraph 15.e shall be used by the Facility to calculate the weighted average RVCM concentration on a daily and 12-month rolling average basis under this Paragraph.

f. Colorite shall pay one-half of any stipulated penalty under this Paragraph to the United States, in the manner set forth in Paragraph 8, and shall pay one-half of any such

penalty to New Jersey, in the manner set forth in Paragraph 9.

14. Dispersion RVCM Limits. Colorite shall comply with the following RVCM concentration limits with respect to all dispersion resins manufactured at the Facility:

a. by no later than 30 days after the Effective Date of this Consent Decree, the daily weighted average RVCM concentration in all dispersion resins manufactured at the Facility will not exceed 1,000 ppm; and

b. by no later than July 1, 2008, the 12-month rolling average RVCM concentration in all dispersion resins manufactured at the Facility will not exceed 90 ppm.

15. For purposes of Paragraph 14:

a. daily RVCM shall be the weighted average residual vinyl chloride concentration in all dispersion resins produced at the Facility on a calendar day;

b. 12-month rolling average RVCM shall be the weighted average vinyl chloride concentration in all dispersion resins produced at the Facility in each calendar month during the 12-month averaging period;

c. the first 12-month rolling average RVCM shall be calculated for the period July 1, 2007 through June 30, 2008; thereafter, each successive 12-month rolling average shall be calculated by including the next consecutive calendar month in the averaging period and dropping the first month from that period;

d. RVCM concentration shall be measured using EPA Reference Method 107; and

e. The following formula shall be used by the Facility to calculate the

weighted average RVCM concentration on a daily and 12-month rolling average basis:

$$\sum (\text{batch concentration VCM in ppm} \times \text{batch yield in lbs}) / \sum (\text{batch yields in lbs})$$

Thus, for N batches during a calculation period, the Facility would calculate the average by:

$$\frac{(\text{ppm 1} \times \text{yield 1} + \text{ppm 2} \times \text{yield 2} + \text{ppm 3} \times \text{yield 3} + \dots + \text{ppm N} \times \text{yield N})}{(\text{yield 1} + \text{yield 2} + \dots + \text{yield N})}$$

16. Sampling of Reactor Opening Loss (“ROL”) and RVCM. By no later than the Effective Date of this Consent Decree, to calculate ROL and RVCM for purposes of the CAA, its applicable regulations, and this Consent Decree, Colorite shall measure ROL for every reactor opening, and shall measure RVCM concentration in every batch of resin manufactured at the Facility.

17. Reciprocating Compressors. By signing this Consent Decree, Colorite certifies that as of March 15, 2008, Colorite removed from service at the Facility all reciprocating compressors, including the compressors designated as numbers 4 and 5. Colorite replaced the reciprocating compressors with two rotary compressors which have been fully installed and integrated at the Facility at a cost of approximately \$1,250,000.00.

18. Leak Detection and Elimination Program. Colorite shall implement a Leak Detection and Elimination (“LDE”) Program at its Facility as follows:

a. By no later than the Effective Date of this Consent Decree, for purposes of the operating program for the vinyl chloride ambient monitoring system at the Facility required under 40 C.F.R. § 61.65(b)(8), Colorite shall consider and respond to as a leak a single reading of any concentration of vinyl chloride equal to or greater than 25 ppm.

b. By no later than 12 months following the Effective Date of this Decree,



for purposes of the operating program for the vinyl chloride ambient monitoring system at the Facility required under 40 C.F.R. § 61.65(b)(8), Colorite shall consider and respond to as a leak a single reading of any concentration of vinyl chloride equal to or greater than 5 ppm.

c. By no later than the Effective Date of this Consent Decree, for gas cylinders used in the vinyl chloride monitoring system, pursuant to 40 C.F.R. § 61.65(b)(8) and this Consent Decree, Colorite shall incorporate into its preventative maintenance program a replacement schedule to ensure that the cylinders are replaced before the expiration date on each cylinder. The program shall include implementation of an internal notification process to ensure timely replacement of the gas cylinders.

d. By no later than the Effective Date of this Consent Decree, Colorite shall tag all valves and pumps at the Facility subject to the Vinyl Chloride NESHAP and create an inventory of all such valves and pumps and shall submit a list of such inventory to the United States, pursuant to Section IX (Notices).

e. By no later than 60 days after the Effective Date of this Consent Decree, but no later than November 30, 2008, Colorite shall develop and implement a training program on compliance with the requirements set forth in Paragraphs 12-17, 19-22, 27-29, 32 and 33 of this Consent Decree. Such training shall include, but not be limited to, all personnel at the Facility who either (i) conduct equipment monitoring and maintenance, or (ii) are involved in operations that are subject to the applicable regulations and this Consent Decree. The training program shall address compliance with the environmental regulations identified above in this Paragraph, including provisions relating to the potential effect of product line modifications on

compliance with such regulations. Colorite shall submit the training program to EPA for approval.

f. By no later than the Effective Date of this Consent Decree, Colorite shall use only portable hydrocarbon analyzers that meet the requirements of EPA Reference Method 21, specified in 40 C.F.R. Part 60, Appendix A, and that have a response time of less than 10 seconds for purposes of complying with the Leak Detection and Elimination Program. Colorite shall calibrate or conduct calibration checks on and calibrate such analyzers daily to monitor for vinyl chloride gases, in accordance with Method 21.

g. By no later than six months following the Effective Date of this Consent Decree, Colorite shall implement a computer software system that will perform quarterly trend analysis on ambient monitoring data to identify areas of the Facility with the greatest number of leaks and the greatest magnitude of leaks. Colorite will analyze the trend data to determine the most effective location for ambient monitoring probes and adjust the location of such monitoring probes to obtain the best representation of fugitive emissions within the Facility. By no later than six months following the Effective Date of this Consent Decree, Colorite shall implement enhanced recordkeeping and record the following: (i) the number of leaks, as defined in Paragraph 18.a, detected by the Facility's vinyl chloride ambient monitoring system during each calendar quarter; (ii) the number of sources of such leaks that were discovered and the number of such leaks that were repaired during each calendar quarter; (iii) for each such leak, the maximum concentration measured at the source of the leak by a portable hydrocarbon analyzer, and the identification number of the analyzer and operator of the analyzer; (iv) for each such leak, the

date and description of the repair(s) and the results of any post-repair monitoring of the source of the leak; and (v) each portable hydrocarbon analyzer calibration or calibration check. The recordkeeping and computer systems implemented pursuant to this Paragraph shall maintain all such records for at least five years. Within 30 days of the end of each calendar quarter, Colorite shall submit to the United States, pursuant to Section X (Reporting Requirements), each such trend analysis, any changes in the location of ambient monitors, the number of leaks, as defined in Paragraph 18.a, detected by the Facility's vinyl chloride monitoring system during the quarter, and the number of sources of such leaks that were discovered and the number of such leaks that were repaired during each calendar quarter.

h. By no later than 90 days following the Effective Date of this Consent Decree, Colorite shall develop and implement written leak identification procedures. Such procedures shall incorporate all of the requirements in this Paragraph, as well as all applicable federal and state regulatory requirements. Colorite shall submit such procedures for approval to the United States, pursuant to the requirements of Paragraphs 36-40 (Approval of Deliverables).

19. Leak Detection and Repair.

a. By no later than the Effective Date of this Consent Decree, Colorite shall conduct Leak Detection and Repair ("LDAR") monitoring at the Facility in accordance with 40 C.F.R. § 61.65(b)(8) and New Jersey Administrative Code 7:27-16:18 - Control and Protection of Air Pollution by Volatile Organic Compounds-Leak Detection and Repair. With respect to 40 C.F.R. § 61.65(b)(8), Colorite shall conduct performance tests on 100% of its valves in vinyl chloride service in the Facility.

b. By no later than the Effective Date of this Consent Decree, an instrument reading of 500 ppm vinyl chloride, with respect to any valve or compressor, or 1,000 ppm, with respect to any other regulated component, measured in accordance with Method 21, 40 C.F.R. Part 60, Appendix A, shall be considered and responded to as a leak for purposes of compliance with the requirements of the Vinyl Chloride NESHAP, N.J.A.C.7:27-16.18, and this Consent Decree.

c. Beginning on the Effective Date of this Consent Decree, whenever a portable hydrocarbon analyzer is used to measure the concentration of a leak at the Facility, the analyzer shall be held as close to the leak interface as possible, in accordance with EPA Reference Method 21.

d. By no later than 30 days following the Effective Date of this Consent Decree, Colorite shall replace or repack all chronically leaking valves at the Facility as often as necessary but no less frequently than once per year. For purposes of determining whether a valve is chronically leaking, a valve is considered chronically leaking if it leaks in two consecutive monitoring periods. A leak in a given calendar quarter shall be determined based on the leak definition(s) applicable to the Facility during that quarter.

20. By no later than the Effective Date of this Consent Decree, Colorite shall modify all reactors and replace any sampling probes, as necessary, to allow Colorite to collect samples at the top, middle, and within 6 inches of the bottom of each reactor vessel, in accordance with 40 C.F.R. § 61.67(g)(5). Colorite shall collect such samples in accordance with 40 C.F.R. § 61.67(g)(5).

21. By no later than the Effective Date of this Consent Decree, Colorite shall implement at the Facility sampling procedures that meet the requirements specified in 40 C.F.R. Part 61, Appendix B, Method 107. Such procedures shall include, but not be limited to: (i) proper labeling, handling, and refrigeration of samples; and (ii) the use of proper calibration gas curves. Colorite shall include training on the proper use of such procedures in the employee training program required by Paragraph 18.e.

22. Wastewater Stripper Root Cause Analysis:

a. Within 60 days of the Effective Date of this Consent Decree, but no later than December 31, 2008, Colorite shall: (i) complete an analysis to determine the cause(s) of the CAA violations associated with the water stripper E32 at the Facility; (ii) propose to EPA and NJDEP the actions necessary to prevent such violations in the future, including all necessary repairs; (iii) submit the results of its analysis to EPA and NJDEP; (iv) submit its proposed plan to correct the violations, including a description of the action(s) to be undertaken; and (v) submit a schedule for the completion of such action(s). Such submissions shall be submitted to EPA and NJDEP in writing in accordance with Section IX (Notices) of this Consent Decree.

b. After an opportunity to consult with EPA and NJDEP regarding its proposed corrective action, but in any event, no later than 30 days following the date of its submission, Colorite shall initiate the proposed action, including any repairs, in accordance with the schedule proposed in Subparagraph (a) above, unless modified after consultation with EPA and NJDEP.

c. For violations that occur after the corrective action is completed pursuant

to Subparagraph (b) above, Colorite shall pay a stipulated penalty, in accordance with Section XI of this Consent Decree (Stipulated Penalties), for each violation of the CAA or its implementing regulations associated with the water stripper.

d. If violations associated with the water stripper occur in three consecutive months, Colorite shall, within 30 days of the end of the third consecutive month, submit to EPA and NJDEP the results of an additional root cause analysis and a plan for any additional proposed corrective actions that includes a description of the actions to be undertaken and a schedule for the completion of such actions.

23. CEMS Certification Procedure-VOC Incinerator CEMS:

a. Within 60 days of the date of lodging of this Consent Decree with the Court, Colorite will provide NJDEP with gas chromatograph (“GC”) specifications for NJDEP review and approval, prior to the purchase of the VOC Incinerator CEMS by Colorite. The VOC Incinerator CEMS shall be capable of quantifying both vinyl chloride and vinyl acetate emissions for PT-1 and PT-2. Colorite shall also submit the cost estimate for the VOC Incinerator CEMS with the GC specifications to NJDEP for review and approval prior to the purchase of the VOC Incinerator CEMS by Colorite.

b. Within 30 days of NJDEP’s approval of either i) the GC specifications and the estimate referenced above, or ii) the Effective Date of this Consent Decree, whichever is later, Colorite will submit a performance specification test protocol to NJDEP for the VOC Incinerator CEMS.

c. Following NJDEP’s approval of the performance specification test

protocol, and within 10 days of installation of the VOC Incinerator CEMS, Colorite will test the VOC Incinerator CEMS and submit an initial certification report to NJDEP within 30 days after completion of the testing. NJDEP will review and approve or disapprove the certification report within 30 days of receipt. If NJDEP disapproves the initial certification report, it shall provide reasons for its disapproval. Within 30 days from such determination, Colorite shall respond to any such disapproval.

24. By a date no later than the Effective Date of this Consent Decree, Colorite shall continue to: (a) emit less than fifty percent (50%) of its potential-to-emit (“PTE”) for vinyl chloride monomer for the following 19 emission points: 6-12, 15, 61, 62, 65, 73-76, 100, 101, 108, and 183; (b) emit less than ten percent (10%) of its PTE for vinyl chloride monomer from all source operations associated with the wastewater treatment plant; and (c) cease emissions for the emission points associated with the reciprocating compressors. Within 5 years of the Effective Date of this Consent Decree, Colorite shall also reduce its PTE for vinyl acetate monomer to no more than 120 tons on a Facility wide basis.

25. In accordance with Paragraph 56 a., Colorite shall submit a request to modify its permits to incorporate the limits in Paragraphs 24 (a) and (b) and to request removal of any current conditions in its permits that allow for any compressor stack emissions.

#### Clean Water Act

26. Colorite shall comply with 40 C.F.R. §§ 112.3, 112.7(a) and 112.7(e). By no later than the Effective Date of this Consent Decree, Colorite shall comply with the Spill Prevention, Containment, and Control (“SPCC”) Plan, attached hereto as Appendix A, or as amended in

accordance with the Oil Pollution Prevention Regulations, 40 C.F.R. Part 112.

27. Colorite shall comply with the following limits established in its New Jersey Pollutant Discharge Elimination System (NJPDES) permit (#NJ00043941): BOD 30-day average limit, BOD daily maximum limits, BOD 30-day average % removal requirements, TDS 30-day average limit, TDS daily maximum limit, VC 30-day average limit, fecal coliform 30-day average limit, fecal coliform daily maximum limit, pH and maximum daily temperature. In addition, Colorite will comply with its NJPDES permit's surface water DMR reporting requirements.

#### RCRA

28. Colorite shall make all hazardous waste determinations required by 40 C.F.R. § 262.11 (1993) (N.J.A.C. 7:26 G-6.1(a)).

29. By signing this Consent Decree, Colorite certifies that it has eliminated its outside boneyard facility, and has removed all material that contains any possible hazardous substances or materials from the inside fenceline boneyard facility. Colorite further certifies that it has identified a new discarded equipment storage location within the facility fenceline and developed training procedures for cleaning equipment properly before placing equipment in the discarded equipment storage location.

30. Colorite shall maintain an emergency response plan in accordance with 40 C.F.R. § 265.52(d) (1993) (N.J.A.C. 7:26G 9.1(a)) and 40 C.F.R. § 265.54(d) (1993) (N.J.A.C. 7:26G 9.1(a)).

31. By no later than 30 days after the Effective Date of this Consent Decree, Colorite shall properly label all satellite accumulation containers ("chip buckets") and keep them closed



except when it is necessary to add or remove waste. In the alternative, Colorite will certify, by no less than 30 days after the Effective Date of this Consent Decree, that it has revised its procedures and now empties chip buckets immediately into a labeled, covered storage container, thereby avoiding the issue of satellite accumulation and eliminating the open hoppers, modified to include screens in the bottoms and sides, that were in use at the time of the September 2004 inspection.

32. By no later than 30 days after the Effective Date of this Consent Decree, Colorite shall modify training procedures such that all personnel in applicable areas of the Facility must carry radios and complete radio check-out forms prior to going on duty when working alone in accordance with 40 C.F.R. § 265.34 (1993) (N.J.A.C. 7:26G-9.1(a)) and 40 C.F.R. § 262.34 (1993) (N.J.A.C. 7:26G-6.1(a)).

#### TSCA

33. Colorite shall comply with 40 C.F.R. § 761.20(a), 40 C.F.R. §761.30(a)(1)(vi), 40 C.F.R. 761.30(a)(1)(x), 40 C.F.R. § 761.60(a) and 40 C.F.R. § 761.207(a).

34. Colorite shall remove from service at the Facility one of the six PCB Transformers no later than 15 days after the Effective Date of this Decree, but no later than September 30, 2008. Colorite shall remove from service at the Facility two of the six PCB Transformers no later than December 30, 2008, with the remaining three PCB Transformers to be removed from service no later than September 30, 2009. Within 5 days of the removal from service of such PCB Transformer(s), Colorite shall send any such transformer(s) off-site to a TSCA-approved disposal facility for disposal in accordance with the disposal provisions of 40 C.F.R. Part 761. Within 30 days of the actual disposal of such transformer(s) at such disposal facility, Colorite shall notify

EPA, Region 2, in accordance with provisions of Section IX (Notices), that such transformer(s) has been sent to a TSCA-approved disposal facility. Such notification shall identify the name of the disposal facility, when the transformer(s) was shipped from the Colorite facility, the method by which disposal occurred, and when actual disposal of said transformer(s) occurred. The notice shall also include appropriate documentation from said disposal facility attesting to the transportation and disposal of such transformer(s), including PCB manifests as required by 40 C.F.R. Part 761, Subpart K.

Additional Injunctive Relief

35. Third-Party Audit. Colorite shall arrange for a third-party audit of all operations at the Facility to identify areas of non-compliance with all applicable federal, state and local environmental requirements and the requirements of this Consent Decree that are effective as of the date of the audit. Colorite shall bear the costs of the audit. The audit shall proceed as follows:

a. Within 30 days of the Effective Date of this Consent Decree, Colorite shall propose to EPA in writing an individual or entity to conduct an initial audit of the Facility's operations.

b. EPA shall either approve or disapprove the proposed auditor. If EPA disapproves the auditor, Colorite shall propose in writing an alternative auditor within 30 days of EPA's disapproval. Colorite shall continue to propose in writing alternative auditors within 30 days of any EPA disapproval until EPA approves a proposed auditor.

c. Once EPA approves Colorite's proposed auditor, Colorite shall schedule the audit of the Facility within 60 days of EPA's approval. The audit shall comply with the

requirements set forth in Appendix B, and shall assess, at a minimum, the Facility's compliance with all applicable federal, state and local environmental requirements, as well as all other requirements of this Consent Decree that are effective as of the date of the audit.

d. Colorite's contract with the auditor shall specify that, within 45 days of the completion of the audit of the Facility, the auditor must submit a detailed written report, to Colorite, EPA and NJDEP, containing the audit's findings and determinations. The audit report must comply with the requirements set forth in Appendix B.

e. Two years following the completion of the audit pursuant to Paragraph 35.c, Colorite shall schedule a follow-up audit by the same approved auditor unless Colorite requests to use another auditor, in which case the approval process described in Subparagraphs (a) and (b) above must be followed. The follow-up audit will consist of the same scope as the original audit, and shall also include any requirements under this Consent Decree that were not effective at the time of the original audit, and Colorite shall ensure that, within 60 days of the completion of the follow-up audit, a written audit report is submitted to Colorite, EPA and NJDEP that provides a detailed analysis addressing the same topics as the original audit report. The follow-up audit report also shall identify any differences observed during the follow-up audit, as compared to the original audit, with respect to Colorite's compliance with all applicable regulatory and Consent Decree requirements.

f. Provided that an item of non-compliance identified in the audit report conducted pursuant to paragraph 35 a.- d. is not a non-minor violation of any applicable requirements under the New Jersey Air Pollution Control Act and any applicable regulations

thereunder, or a requirement of this Consent Decree effective as of the date of the audit, and provided that the events giving rise to any non-compliance are corrected by Colorite as required under Appendix B, NJDEP will not seek penalties for such item pursuant to said Act and regulations or this Consent Decree. For purposes of this sub-paragraph, "non-minor" refers to those violations identified as such in the Civil Administrative Penalty Schedule set forth at N.J.A.C. 7:27A-3.10. Notwithstanding the foregoing, for any violation of the New Jersey Air Pollution Control Act, any applicable regulations thereunder, or the requirements of this Consent Decree, where the emission of air contaminants is in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property, NJDEP may, in its discretion, assess the maximum civil administrative penalty applicable under the Civil Administrative Penalty Schedule and/or seek the maximum penalty applicable under this Consent Decree. The provisions of this sub-paragraph pertain only to violations of the New Jersey Air Pollution Control Act or regulations thereunder, or to violations of the Consent Decree pertaining to air emissions. This sub-paragraph applies only with respect to the initial audit conducted by Colorite pursuant to Paragraph 35. a.- d. of this Consent Decree; it does not apply to the follow-up audit that Colorite is required to conduct pursuant to Paragraph 35.e. or to any other audits that Colorite may undertake which are not required by this Consent Decree.

36. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Consent Decree, EPA, after consultation with New Jersey, 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.

37. If the submission is approved pursuant to Paragraph 36.a, Colorite shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, in accordance with Paragraph 36.b or 36.c, Colorite shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Colorite's right to dispute only the specified conditions or the disapproved portions, under Section XIII of this Decree (Dispute Resolution).

38. If the submission is disapproved in whole or in part pursuant to Paragraph 36.c or 36.d, Colorite 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 written approval, in accordance with Paragraphs 36 and 37 above. If the resubmission is approved in whole or in part, Colorite shall proceed in accordance with Paragraph 37.

39. Any stipulated penalties applicable to the original submission, as provided in Section XI of this Decree (Stipulated Penalties), shall accrue during the 45 day period or other period specified in accordance with Paragraph 38 above, 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 Colorite's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

40. If a resubmitted plan, report or other item, or portion thereof, is disapproved in whole or in part, in accordance with Paragraph 36 above, EPA, after consultation with New Jersey, may again require Colorite to correct any deficiencies, in accordance with the preceding Paragraphs 37 and 38 above, subject to Colorite's right to invoke Dispute Resolution and the right of EPA and New Jersey to seek stipulated penalties as provided in the preceding Paragraphs.

41. Permits. Where any obligation under this Section requires Colorite to obtain a federal, state, or local permit or approval, Colorite shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Colorite may seek relief under the provisions of Section XII 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 Colorite has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

#### VI. SUPPLEMENTAL ENVIRONMENTAL PROJECTS AND NEW JERSEY STATE-ONLY ENVIRONMENTAL PROJECTS

42. The Parties agree that the projects required in this Section are intended to secure significant environmental and/or public health protection and improvement. Colorite shall implement the following Supplemental Environmental Projects ("SEPs") and the NJ Projects, in accordance with this Section and Appendices C-E (Scopes of Work), attached hereto and incorporated herein by reference.

a. SEP: Suspension Monomer Recovery Improvement. By no later than twelve (12) months after the date on which this Consent Decree is lodged with the Court, or six

months after the Effective Date of this Decree, whichever date is later, Colorite shall complete implementation of the Suspension Monomer Recovery Improvement SEP. The Suspension Monomer Recovery Improvement SEP is designed to address high slurry stripping that results from vinyl chloride monomer used mainly to produce the high molecular weight grade resins manufactured in the suspension plant. Implementation of the project is expected to improve stripping operations in the suspension plant and thereby reduce overall vinyl chloride emissions. As set forth in more detail in the Scope of Work, attached hereto as Appendix C, the Suspension Monomer Recovery Improvement SEP will add additional stripping capacity in the suspension plant and includes the installation of electronic controls and safety systems and improved recording technology. Within 45 days after completing the implementation of the Suspension Monomer Recovery Improvement SEP, Colorite shall submit a written SEP Completion Report in accordance with Paragraph 44 below.

b. SEP: Installation of VOC analyzer and stack flow monitor on Emission Unit 8 (“VOC Dryer CEMS”).

(i) By no later than six months after the Effective date of this Consent Decree, Colorite shall complete installation of a VOC Dryer CEMS, with all associated components, on the PT-12 dryer stack (as identified in the Facility Title V permit as PT-12, Emission Unit 8) to monitor vinyl acetate and vinyl chloride emissions. The equipment and instrumentation to be installed is set forth in more detail in the Scope of Work, attached hereto as Appendix D. The VOC Dryer CEMS shall cost no less than \$186,000.00.

(ii) Within 30 days of installation, the Facility shall develop a standard

operating procedure (“SOP”) for the VOC Dryer CEMS, including a specification test protocol, for approval in accordance with the provisions in Paragraphs 36-40 (Approval of Deliverables).

(iii) Within 10 days of receiving approval of the SOP, Colorite shall commence operations of the VOC Dryer CEMS in accordance with the approved design specifications and SOP.

(iv) Within 45 days of completing items (i)-(iii) above, Colorite shall submit a written SEP Completion Report in accordance with Paragraph 44 below.

(v) Colorite shall operate the VOC Dryer CEMS at all times that dryer stack PT-12 is in operation, except as provided for in the approved SOP.

(vi) No later than the first quarter after commencement of operation of the VOC Dryer CEMS, Colorite shall submit quarterly, in electronic form, EEMPRs from the VOC Dryer Stack to NJDEP and EPA in accordance with the requirements of Section X (Reporting Requirements).

c. NJ Project: Installation of VOC Incinerator CEMS on Incinerator Stack PT1 and PT2 (“VOC Incinerator CEMS”)

(i) Colorite will install the VOC Incinerator CEMS as soon as practicable after the entry of this Decree, and no later than 6 months following either i) NJDEP’s approval of the GC specifications and cost estimate referenced in Paragraph 23, or ii) the Effective Date of the Consent Decree, whichever is later. The equipment and instrumentation to be installed is set forth in more detail in the Scope of Work, attached hereto as Appendix E. The VOC Incinerator CEMS shall cost no less than \$165,000.00.



(ii) Within 10 days of receiving approval of the certification report pursuant to Paragraph 23 of this Consent Decree, Colorite shall commence operation of the VOC Incinerator CEMS in accordance with the design specifications and performance specification test protocol approved by NJDEP.

(iii) Within 30 days of installation, Colorite shall develop a SOP for the VOC Incinerator CEMS and shall submit this procedure to NJDEP for approval.

(iv) Within 45 days of completing items (i)-(iii) above, Colorite shall submit a written NJ Project Completion Report in accordance with Paragraph 44 below.

(v) Colorite shall operate the VOC Incinerator CEMS at all times that the incinerator (operational unit U1) is in operation, except as provided for in the SOP approved by NJDEP.

(vi) No later than the first quarter after commencement of operation of the VOC Incinerator CEMS and NJDEP approval of the certification report pursuant to Paragraph 23, Colorite shall submit quarterly, in electronic form, EEMPRs from the VOC Incinerator CEMS to NJDEP and EPA in accordance with the requirements of Section X of this Consent Decree (Reporting Requirements).

d. NJ Project: Vinyl Acetate Emission Limits, Incinerator Stack PT-1 and PT-2:

(i) Within 30 days following the first six months of operation of the VOC Incinerator CEMS pursuant to Paragraph 42. c. above, Colorite shall submit the CEMS monitoring data collected for the first six months of operation to NJDEP and will propose a vinyl acetate concentration emission limit for incinerator stacks PT-1 and PT-2 in units of parts per

million (“ppm”).

(ii) NJDEP will evaluate Colorite’s proposal and determine if the proposed limits are acceptable as maximum limits. If NJDEP requests that Colorite conduct any modeling in support of its proposed vinyl acetate emission limits, Colorite will conduct such modeling. The final maximum vinyl acetate emission limits will provide for a reasonable certainty of compliance by Colorite based upon the CEMS monitoring data.

(iii) Upon approval by NJDEP of the emission limits, Colorite shall file any applications necessary to incorporate the approved limits into the Facility’s Title V permit.

(iv) Within 45 days of completing items (i)-(iii) above, Colorite shall submit a written NJ Project Completion Report in accordance with Paragraph 44 below.

e. NJ Project: Stack Testing, Dryer Stacks:

(i) Colorite shall conduct stack tests every two years to determine vinyl chloride and vinyl acetate emission rates for the two dryer stacks identified as PT-14 and PT-15 of Emission Unit 8.

(ii) Within 90 days of the Effective Date of this Consent Decree, Colorite shall submit to NJDEP for review and approval a stack testing protocol for measuring vinyl chloride and vinyl acetate emissions for the two dryer stacks identified as PT-14 and PT-15 of Emission Unit 8.

(iii) No later than 90 days from the written approval by NJDEP of the stack testing protocol unless otherwise agreed upon by Colorite and NJDEP, Colorite shall conduct stack testing on a date that is mutually acceptable with New Jersey.

(iv) Colorite shall calculate the vinyl chloride and vinyl acetate emission rates from the biennial stack tests in accordance with the NJDEP-approved protocol.

(v) Within 30 days of conducting the stack tests required by this Paragraph, Colorite shall report in writing to NJDEP the results of its stack tests unless NJDEP provides Colorite with additional time to submit such test results, in which case Colorite shall report the results by no later than the date specified by NJDEP.

(vi) Within 45 days of completing items (i)-(v) above, Colorite shall submit a written NJ Project Completion Report in accordance with Paragraph 44 below.

43. With regard to the SEPs, Colorite hereby certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and that Colorite provided good faith estimates of the cost to implement the SEPs;

b. that, as of the date of executing this Consent Decree, Colorite is not required to perform or to develop any of the SEPs, or any portion thereof, by any federal, state, or local law or regulation, nor is Colorite required to perform or to develop any of the SEPs, or any portion thereof, as a part of any other agreement, grant, or as injunctive relief in any other action in any forum;

c. that the SEPs are not projects that Colorite was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Colorite has not received, and will not receive, credit in any other

enforcement action for any of the SEPs; and

e. that Colorite will not receive any reimbursement for any portion of the SEPs from any other person.

44. SEP and NJ Project Completion Reports. Colorite shall submit a SEP Completion Report for each SEP required by this Consent Decree to the appropriate EPA Project Coordinator in accordance with Section IX (Notices) by the dates set forth in Paragraphs 42. a. and 42. b. Colorite shall submit a NJ Project Completion Report to the appropriate State Project Coordinator in accordance with Section IX (Notices) by the dates set forth in Paragraphs 42. c., d., and e. The SEP Completion Reports and the NJ Project Completion Reports shall contain the following information:

- (i) A detailed description of each SEP or NJ Project as implemented;
- (ii) A description of any problems encountered and the solutions thereto;
- (iii) An itemized list of all eligible SEP or NJ Project costs expended;
- (iv) Certification that each SEP or NJ Project has been fully implemented pursuant to the provisions of this Consent Decree and its Appendices; and
- (v) A description of the environmental and public health benefits resulting from implementation of each SEP or NJ Project (with a quantification of the benefits and pollutant reductions, where appropriate).

45. EPA and New Jersey may, in their sole discretion, require information in addition to that described in the preceding Paragraph in order to evaluate Colorite's SEP and NJ Project Completion Reports.

46. After receiving a SEP Completion Report, the United States shall notify Colorite whether or not Colorite has satisfactorily completed the SEP. If Colorite has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section XI (Stipulated Penalties) of this Consent Decree. After receiving a NJ Project Completion Report, New Jersey shall notify Colorite whether or not Colorite has satisfactorily completed the NJ Project. If Colorite has not completed the NJ Project in accordance with this Consent Decree, stipulated penalties may be assessed and payable to New Jersey under Section XI (Stipulated Penalties) of this Consent Decree.

47. Disputes concerning the satisfactory performance of a SEP or a NJ Project and the amount of eligible SEP or NJ Project costs may be resolved under Section XIII of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

48. Each submission required under this Section shall be signed and certified in accordance with Paragraph 53 by an Authorized Official with knowledge of the SEP or NJ Project.

49. Any public statement, oral or written, in print, film or other media, made by Colorite making reference to the SEPs under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, United States v. Burlington Resins, Inc., taken on behalf of the U.S. Environmental Protection Agency.” Any public statement, oral or written, in print, film or other media, made by Colorite making reference to the NJ Projects under this Decree shall include the following language: “This project

was undertaken in connection with the settlement of an enforcement action, New Jersey v. Burlington Resins, Inc., taken on behalf of the New Jersey Department of Environmental Protection.”

50. Reports. Colorite shall submit any additional reports required by the Scope of Works attached to this Consent Decree as Appendices C - E to EPA or NJDEP in accordance with the schedule and requirements recited therein. Colorite may consolidate the reports required by the Scope of Works with other reports required by this Consent Decree.

51. Colorite shall submit all notices and reports required by this Section in accordance with Section IX (Notices).

52. Upon completion of each SEP or NJ Project, Colorite shall continuously use or operate the system or equipment comprising each of the SEPs or NJ Projects in accordance with Section XX of this Consent Decree (Termination) and the Scopes of Work (Appendices C-E), except as provided in this Section or during periods of malfunction of the system or equipment, manufacturing unit shutdown, or maintenance (scheduled or unscheduled) on the equipment, provided that during such periods Colorite shall implement good air pollution control practices to minimize emissions.

53. For all documents or reports, including, without limitation, any SEP Completion Reports and NJ Project Completion Reports, submitted pursuant to this Section, Colorite shall, by its Authorized Official, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

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.

54. This Consent Decree shall not relieve Colorite 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 the equipment or technology installed by Colorite in connection with the SEPs undertaken pursuant to this Consent Decree.

55. For Federal income tax purposes, Colorite agrees it will neither capitalize into inventory or basis nor deduct the costs or expenditures incurred in implementing each SEP.

#### VII. TITLE V INCORPORATION

56. Incorporating Consent Decree Requirements Into Permits.

a. By no later than 60 days following the Effective Date of this Consent Decree, Colorite shall submit an application to the New Jersey DEP to incorporate the emission limits and standards required by Paragraphs 12 through 19 and 24 (a-c) of this Consent Decree into a federally enforceable permit issued pursuant to Title I of the Clean Air Act.

b. By no later than 30 days following issuance of the permit required in subparagraph a, above, Colorite shall modify any applicable Title V permit application, or apply for modifications to its Title V permit, to include the emission limits and standards required by the federally enforceable permit described in subparagraph a, above. Nothing in this subparagraph shall prevent Colorite from seeking to modify any applicable Title V permit application or to apply for modifications to its Title V permit concurrently with the permit application in

subparagraph a.

c. Following submission of the permit application(s), Colorite shall cooperate with the appropriate permitting authority by promptly submitting all information that such permitting authority seeks following its receipt of the permit application in order to review the application(s).

d. The requirements of Section V (Compliance Requirements) will be federally enforceable under this Consent Decree and, when the requirements identified above in subparagraph a. above are incorporated into the state permit(s), applicable to the Facility and then incorporated into the Facility's Title V Permit, these requirements also will be federally enforceable pursuant to such permits.

57. The Parties agree to the incorporation of the requirements of Paragraphs 12 through 19 and Paragraphs 24 through 25 of this Consent Decree into the Facility's Title V permit and agree that such incorporation will be in accordance with applicable state Title V regulations.

#### VIII. LIMIT ON EMISSION CREDITS

58. General Prohibition on Use of Emission Reductions for Emission Credits. Colorite shall not generate or use any emission reductions that result from any SEPs or NJ Projects conducted or controls utilized to comply with this Consent Decree as netting reductions or emissions offsets in any Prevention of Significant Deterioration ("PSD") permit or permit proceeding or minor or major non-attainment New Source Review ("NSR") permit or permit proceeding unless otherwise authorized under Paragraph 59.

59. Outside the Scope of the General Prohibition. Nothing in this Section is intended to prohibit Colorite from seeking to, or EPA or New Jersey from denying Colorite's request to:



(1) utilize or generate emissions credits from the Facility to the extent that the proposed credits or reductions represent the difference between the emissions limitations set forth in or required by this Consent Decree and the more stringent emissions limitations Colorite may elect to accept for these units in a permitting process; or (2) utilize emissions reductions achieved pursuant to this Consent Decree for the Facility's compliance with any rules or regulations designed to address regional haze or the non-attainment status of any area (excluding PSD and Non-Attainment New Source Review rules and regulations, but including, for example, VOC RACT rules, that apply to the Facility). Notwithstanding the preceding sentence, Colorite shall not trade or sell any emissions reductions resulting from this Consent Decree.

#### IX. NOTICES

60. Unless otherwise provided herein, notifications or communications with the United States, EPA, New Jersey or Colorite that are required under this Consent Decree will be deemed submitted on the date they are postmarked and sent either by overnight delivery or by certified or registered mail, return receipt requested. Except as otherwise provided herein, when written notification to or communication with the United States, EPA, New Jersey or Colorite is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States:

Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044-7611  
DJ # 90-5-2-1-08682

As to EPA, with copies to the Regional Office:

Bernadette Rappold  
Director, Special Litigation and Projects Division  
Office of Civil Enforcement  
Mail Code 2248A  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

EPA Region 2:

Kenneth Eng  
Chief, Air Compliance Branch  
Division of Compliance Assurance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 21<sup>st</sup> floor  
New York, NY 10007-1866

Flaire Mills  
Chief, Air Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007-1866

As to Colorite:

Clark R. Baubles  
Director of Environmental Affairs  
Colorite Specialty Resins  
P.O. Box 116, Beverly Road  
Burlington, NJ 08016-0116

David C. Axmann  
General Manager  
Colorite Specialty Resins  
P.O. Box 116, Beverly Road  
Burlington, NJ 08016-0116

Burlington Resins, Inc.  
c/o Tekni-Plex, Inc.  
201 Industrial Parkway  
Somerville, NJ 08876  
Attn: Michael W. Zelenty

Robert W. Whetzel, Esq.  
Richards, Layton & Finger, P.A.  
One Rodney Square  
P.O. Box 551  
Wilmington, DE 19899-0551

As to New Jersey:

Section Chief  
Environmental Enforcement  
Division of Law  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 093  
Trenton, NJ 08625-093

and

Manager  
Central Regional Air Compliance and Enforcement  
New Jersey Department of Environmental Protection  
300 Horizon Center  
P.O. Box 407  
Robbinsville, New Jersey 08625-0407

61. All EPA approvals or comments required under this Decree shall come from the Project Coordinator for the Work, SEP, or requirements at issue in the submittal in accordance with the requirements of Paragraphs 36-38.

62. All New Jersey approvals or comments required under this Decree relating to the NJ Projects shall come from NJDEP.

63. Any Party may change any of its own Project Coordinators, notice recipients or

the address for providing notices to it by all other Parties by providing all other Parties with a notice setting forth such Project Coordinator, new notice recipient or address.

#### X. REPORTING REQUIREMENTS

64. Colorite shall submit the following reports:

a. Within 30 days after the end of each quarter (i.e., by April 30, July 30, October 30 and January 30) after the Effective Date of this Consent Decree, but no later than October 30, 2008, until termination of this Decree pursuant to Section XX (Termination), Colorite shall submit a quarterly report for the preceding quarter that shall include a progress report of the compliance measures as outlined in Section V (Compliance Requirements), including, but not limited to, a description of the activities completed during this reporting period, projected work for the next reporting period, and status of any permit applications. The quarterly reports shall also include a progress report on each SEP and NJ Project. The progress report on each SEP and NJ Project shall include a discussion of Colorite's progress in satisfying all of its obligations in connection with each SEP or NJ Projects under Section VI of this Decree (Supplemental Environmental Projects and New Jersey State-Only Environmental Projects), including, at a minimum, a narrative description of activities undertaken, status of any construction or compliance measures, including the completion of any milestones set forth in the Work Plans, attached as Appendices C-E to this Decree, and a summary of costs incurred to date in implementing each SEP and NJ Project.

b. The report required by Paragraph 64 a. above shall also include a description of any non-compliance with the requirements of this Consent Decree and an

explanation of the likely cause of the non-compliance and of the remedial steps taken, or to be taken, to prevent or minimize such non-compliance.

c. If Colorite violates any requirement of this Consent Decree, Colorite shall notify EPA and New Jersey, in writing, of such violation and provide an estimate of the likely duration of the violation and, within ten working days of the day Colorite first became aware of the violation, provide an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. In the event that the cause of a violation cannot be fully explained at the time the report is due, Colorite shall so state in the report, and shall investigate the cause of the violation and submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the initial report.

d. Nothing in this Paragraph or the following Paragraph relieves Colorite of its obligation to provide, if appropriate, the notice required by Section XII of this Consent Decree (Force Majeure).

65. In addition to notification and reporting required by existing federal and state emergency notification and reporting requirements, whenever any violation of this Consent Decree or any other event affecting or relating to Colorite's performance under this Decree, poses an immediate threat to the public health or welfare or the environment, Colorite shall notify the Chief of EPA Region 2 Air Compliance Branch by electronic or facsimile transmission, as soon as possible, but no later than 24 hours after Colorite first knew of the violation or event, or had reason to know that the violation or event would occur. This procedure is in addition to the requirements set forth in the preceding Paragraph.

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

67. Each report submitted by Colorite under this Section shall be signed by an Authorized Official of the submitting party and shall include the following certification:

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

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

68. Failure to report as required by this Section will subject Colorite to stipulated penalties as set forth in Section XI (Stipulated Penalties).

69. The reporting requirements of this Consent Decree do not relieve Colorite of any reporting obligations required by the CAA, the CWA, TSCA, EPCRA, or RCRA or any of their implementing regulations, or by any other federal, state or local law, regulation, permit or other requirement.

70. 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.

XI. STIPULATED PENALTIES

71. Colorite shall be liable for stipulated penalties as specified below to the United States and New Jersey for violations of this Consent Decree, unless excused under Section XII (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.

72. Late Payment of Civil Penalty. If Colorite fails to pay the civil penalty, as required under Section IV of this Decree (Civil Penalty), Colorite shall pay a stipulated penalty of \$1,000.00 for the first ten days payment is late, and \$5,000.00 for each day thereafter, to the United States and New Jersey per day for each day that the payment is late plus interest on the amount overdue at the rate specified in 31 U.S.C. § 3717.

73. Penalties for New Jersey Only Projects. Colorite shall pay stipulated penalties to New Jersey only for each failure by Colorite to comply with the terms of the NJ Projects as described in Paragraph 42 c. - 42 e.

74. Compliance Milestones

a. The following stipulated penalties shall accrue per violation per day for each violation of the requirements as set forth in Section V and Paragraph 42 c. - 42 e. which include, but are not limited to, the compliance milestones identified in subparagraph b:

Penalty Per Violation Per Day

\$1,000.00

Period of Noncompliance

1<sup>st</sup> through 14<sup>th</sup> Day

\$ 2,500.00 15<sup>th</sup> through 30<sup>th</sup> Day

\$ 5,000.00 31<sup>st</sup> Day and beyond

b. The compliance milestones include:

- (i) notification of suspension RVCM limit in accordance with the timeframe and requirements set forth in Paragraph 12;
- (ii) implementation of the suspension RVCM daily weighed average and 12-month rolling average RVCM limits into State and Title V permits;
- (iii) payment of the stipulated penalty in accordance with the requirements of Paragraph 13;
- (iv) compliance with the dispersion RVCM concentration limits for daily weighted average in accordance with the timeframes and/or requirements set forth in Paragraphs 14 and 15;
- (v) sampling of ROL and RVCM in accordance with the requirements set forth in Paragraph 16;
- (vi) implementation of the LDE Program as described in Paragraph 18. Each violation of the LDE Program, as described in Paragraph 18, is a separate violation of this Consent Decree, and therefore a separate stipulated penalty accrues for each violation of the LDE Program;
- (vii) implementation of the LDAR requirements described in Paragraph 19. Each violation of the LDAR requirements, as described in Paragraph 19, is a separate violation of this Consent Decree, and therefore a separate



- stipulated penalty accrues for each violation of the LDAR requirements as described in Paragraph 19;
- (viii) modification of reactors and replacement of any sampling probes and collection of samples in accordance with the requirements set forth in Paragraph 20;
  - (ix) implementation of sampling procedures and employee training at the Facility, as set forth in Paragraph 21;
  - (x) achievement of PTE reductions as set forth in Paragraph 24;
  - (xi) submittal of VOC Incinerator CEMS specifications, installation of the VOC Incinerator CEMS, and submittal of certification report in accordance with the requirements set forth in Paragraphs 23 and 43. c.;
  - (xii) submittal of root cause analysis of CAA violations associated with water stripper, as required by Paragraph 22;
  - (xiii) compliance with the CAA or its implementing regulations for exceedences of vinyl chloride from the water stripper after the root cause analysis is conducted and proposed repairs, if any, are performed pursuant to Paragraph 22;
  - (xiv) compliance with the SPCC and the NJDEP Permit, as required by Paragraphs 26 and 27;
  - (xv) compliance with hazardous waste determinations, as required by Paragraph 28;

- (xvi) elimination of the boneyard facility outside the fenceline, identification of a new storage area within the fenceline, and development of training and procedures, as required by Paragraph 29;
- (xvii) maintenance of an emergency response plan, as required by Paragraph 30;
- (xviii) non-compliance with requirements concerning satellite accumulation containers, as required by Paragraph 31;
- (xix) modification of training procedures, as required by Paragraph 32;
- (xx) removal of one PCB transformer from service by September 30, 2008, removal of two PCB transformers from service by December 31, 2008, and removal of the remaining three PCB transformers by September 30, 2009, as required by Paragraph 34;
- (xxi) notification of the U.S. of removal of transformers, as required by Paragraph 34;
- (xxii) conducting the third party audit, as required by Paragraph 35;
- (xxiii) incorporation of Consent Decree requirements into permits, as required by Section VII;
- (xxiv) collection of CEMS monitoring data and submittal of modification application, as required by Paragraph 43. d.; and
- (xxv) conducting stack tests, as required by Paragraph 43. e.

75. Penalties for 12-month Rolling Average: Colorite shall pay a stipulated penalty in the amount of \$10,000.00 for each violation of the 12-month rolling average for the dispersion

RVCM concentration limits calculated in accordance with the timeframes and/or requirements set forth in Paragraphs 14 and 15. Colorite shall calculate its 12-month rolling average emissions on a monthly basis and shall pay the stipulated penalty as specified above each time it violates that limit. However, if Colorite violates the 12-month rolling average for the dispersion RVCM concentration limits for two consecutive months, the stipulated penalty to be paid by Colorite shall increase to \$15,000.00 for the second month, and for any consecutive month for additional violations of this limit.

76. Reporting Requirements. The following stipulated penalties shall accrue per violation per day for each violation of the reporting requirements of Sections VI and X of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750.00	1 <sup>st</sup> through 14 <sup>th</sup> Day
\$1,500.00	15 <sup>th</sup> through 30 <sup>th</sup> Day
\$3,000.00	31 <sup>st</sup> Day and beyond

77. SEP Compliance.

a. If Colorite fails to satisfactorily complete either the Suspension Monomer Recovery SEP or the VOC Dryer CEMS SEP by the deadlines set forth in Paragraph 42 or fails to comply with any of the milestones set forth in Paragraph 42 and the attached appendices C-D, Colorite shall pay stipulated penalties for each day for which it fails to satisfactorily complete the project, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,500.00	1 <sup>st</sup> through 14 <sup>th</sup> Day
\$ 3,000.00	15 <sup>th</sup> through 30 <sup>th</sup> Day
\$ 5,000.00	31 <sup>st</sup> Day and beyond

b. If Colorite fails to implement the Suspension Monomer Recovery SEP, or halts or abandons work on this SEP, Colorite shall pay a stipulated penalty of \$850,000.00 in addition to any penalty required under Subparagraph (a) above. If Colorite fails to implement the VOC Dryer CEMS SEP or halts or abandons work on this project, Colorite shall pay a stipulated penalty of \$250,000.00 in addition to any penalty required under Subparagraph (a) above.

Colorite shall pay one-half of any stipulated penalty under this Paragraph to the United States, in the manner set forth in Paragraph 8, and shall pay one-half of any such penalty to New Jersey, in the manner set forth in paragraph 9.

78. 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. If Colorite notifies EPA and the State that it is not implementing either the Suspension Monomer Recovery SEP or the VOC Dryer CEMS SEP, or is halting or abandoning work on these SEPS, the stipulated penalties under Paragraph 77 a. shall cease accruing, and stipulated penalties shall accrue under above Paragraph 77 b. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

79. Colorite shall pay stipulated penalties to the United States and New Jersey within

30 days of a written demand for payment by either the United States or New Jersey. For all stipulated penalties, with the exception of stipulated penalties relating to the performance of NJ Projects, Colorite shall pay 50% of the total stipulated penalty amount due to the United States and 50% to the State. The party making the demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other parties.

80. The United States or New Jersey may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree.

81. Stipulated penalties shall continue to accrue as provided in Paragraph 78 above, 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 the State that is not appealed to the Court, Colorite shall pay accrued penalties determined to be owing, together with interest, to the United States or New Jersey within 30 days of the effective date of the agreement or the receipt of EPA's or the State's decision or order.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Colorite shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in subparagraph (c) below.

c. If any party appeals the District Court's decision, Colorite shall pay all accrued penalties determined to be owing, together with interest, within fifteen days of receiving the final appellate court decision.

82. Colorite shall pay stipulated penalties owing to the United States in the manner set

forth and with the confirmation notices required by Paragraph 8, 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. Colorite shall pay stipulated penalties owing to New Jersey in the manner set forth and with the confirmation notices required by Paragraph 9, 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.

83. If Colorite fails to pay stipulated penalties according to the terms of this Consent Decree, Colorite 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 New Jersey from seeking any remedy otherwise provided by law for Colorite's failure to pay any stipulated penalties.

84. Subject to the provisions of Section XV 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, penalties or sanctions available to the United States and the State for Colorite's violation of this Consent Decree or applicable law. The United States and/or the State will not seek stipulated penalties and civil penalties for the same violation of the Consent Decree.

## XII. FORCE MAJEURE

85. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond control of Colorite, or any entity controlled by Colorite, or of Colorite's contractors, that delays or prevents the performance of any obligation under this

Consent Decree despite Colorite's best efforts to fulfill the obligation. The requirement that Colorite 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 Colorite's financial ability to perform any obligation under this Consent Decree.

86. 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 claimed force majeure event, Colorite shall provide notice orally and by electronic or facsimile transmission to the Project Coordinators within 72 hours of when Colorite first knew that the event might cause a delay. Within seven days thereafter, Colorite shall provide in writing to EPA and New Jersey 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; Colorite's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Colorite, such event may cause or contribute to an endangerment to public health, welfare or the environment. Colorite 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 Colorite 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. Colorite shall be deemed to know of any

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

87. If EPA, after a reasonable opportunity for review and comment by New Jersey, 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, after a reasonable opportunity for review and comment by the State, 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 Colorite in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

88. If the United States or New Jersey, as applicable, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA or NJDEP will notify Colorite in writing of its decision.

89. If Colorite elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), it shall do so no later than ten days after receipt of notice from either EPA or New Jersey. In any such proceeding, Colorite 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 Colorite complied with the requirements of Paragraphs 85 and 86 above. If Colorite carries this burden, the delay at issue shall be deemed not to be a violation by



Colorite of the affected obligation(s) of this Consent Decree identified to EPA and the Court.

### XIII. DISPUTE RESOLUTION

90. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes amongst the parties arising under or with respect to this Consent Decree. Colorite's failure to seek resolution of a dispute under this Section shall preclude Colorite from raising any such issue as a defense to an action by the United States to enforce any obligation of Colorite arising under this Decree.

91. 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 Colorite sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 days from the date the dispute arises, unless that period is modified by written agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, Colorite invokes formal dispute resolution procedures as set forth below.

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

Colorite's position and any supporting documentation relied upon by Colorite. Service under this Section will be deemed effectuated by sending the Statement of Position to the opposing party in accordance with Section IX (Notices).

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

94. Colorite may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section IX of this Consent Decree (Notices), a motion or other application requesting judicial resolution of the dispute. The motion must be filed within 20 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Colorite's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

96. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 92 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA or the State under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Colorite shall have the burden of demonstrating, based on the administrative record made during the dispute resolution, that the position of the United States is arbitrary and capricious, contrary to the requirements of this Consent Decree, 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 92, Colorite shall bear the burden of demonstrating that its position complies with this Consent Decree.

97. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Colorite 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 81. If Colorite does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

#### XIV. INFORMATION COLLECTION AND RETENTION

98. The United States, New Jersey and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- (i) monitor the progress of activities required under this Consent Decree;
- (ii) verify any data or information submitted to the United States or New Jersey in accordance with the terms of this Consent Decree;
- (iii) obtain samples and, upon request, splits of any samples taken by Colorite or its representatives, contractors, or consultants;
- (iv) obtain documentary evidence, including photographs and similar data; and
- (v) assess Colorite's compliance with this Consent Decree.

99. Upon request, Colorite shall provide EPA and New Jersey or their authorized representatives splits of any samples taken by Colorite. Upon request, EPA and New Jersey shall provide Colorite splits of any samples taken by EPA or New Jersey.

100. In addition to complying with any other applicable local, state or federal records preservation requirement, until two years after the termination of this Consent Decree, Colorite shall retain, and shall instruct its contractors and agents to preserve, at least one legible copy of all documents, records, or other information (including documents, records, or other information in electronic form) developed or collected by Colorite or its contractors or agents, in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Colorite's

performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Colorite shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

101. At the conclusion of the information-retention period provided in the preceding Paragraph, Colorite shall notify the United States and New Jersey 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 New Jersey, Colorite shall deliver any such documents, records, or other information to EPA or New Jersey. Colorite may assert that certain documents, records, or other information is privileged under the attorney-client privilege, the work product doctrine or any other privilege recognized by federal law. If Colorite asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Colorite. 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.

102. Colorite 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 Colorite seeks to protect as CBI, Colorite shall follow the procedures set forth in 40 C.F.R. Part 2.

103. 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 New Jersey pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Colorite to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

104. This Consent Decree resolves the civil claims of the United States and New Jersey for the violations alleged in the Complaints filed in this action through the date of lodging.

105. The United States and New Jersey reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 104. This Consent Decree shall not be construed to limit the rights of the United States or New Jersey to obtain penalties or injunctive relief under the CAA, the CWA, RCRA, TSCA, or EPCRA, or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 104.

106. In any subsequent administrative or judicial proceeding initiated by the United States or New Jersey for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Colorite's violations, Colorite 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 New Jersey 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 104 of this Section.

107. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Colorite is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits, and Colorite's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and New Jersey do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Colorite's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, the CWA, RCRA, TSCA, or EPCRA, or with any other provisions of federal, state, or local laws, regulations, or permits.

108. This Consent Decree does not limit or affect the rights of Colorite or of the United State or New Jersey 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 Colorite, except as otherwise provided by law.

109. Colorite neither admits nor denies any finding of fact stated in this Consent Decree and does not admit any fact alleged in the Complaint or Complaint in Intervention and denies any liability to the United States or New Jersey arising out of the transactions or occurrences alleged therein.

110. 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.

#### XVI. COSTS

111. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and New Jersey 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 Colorite.

#### XVII. EFFECTIVE DATE

112. 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.

#### XVIII. RETENTION OF JURISDICTION

113. 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 XIII (Dispute Resolution) and XIX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

#### XIX. MODIFICATION

114. The terms of this Consent Decree, including attached appendices with the exception of Appendix A, 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.

115. Any disputes concerning modification of this Decree shall be resolved pursuant to



Section XIII of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 96, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## XX. TERMINATION

116. After Colorite completes the requirements of Section V (Compliance Requirements) of this Decree and thereafter maintains satisfactory compliance with all requirements of this Consent Decree for a period of six months, or five years following the Effective Date of this Consent Decree, whichever is later, Colorite may submit in writing to the United States and New Jersey a Request for Termination, stating that Colorite has satisfied all conditions or requirements for termination of this Consent Decree, together with all necessary supporting documentation.

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

118. If the United States, after consultation with New Jersey, does not agree that the Decree may be terminated, Colorite may invoke Dispute Resolution under Section XIII of this Decree. However, Colorite shall not seek Dispute Resolution of any dispute regarding

termination, under Section XX, until 60 days after service of its Request for Termination.

#### XXI. PUBLIC PARTICIPATION

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

#### XXII. SIGNATORIES/SERVICE

120. Each undersigned representative of Colorite, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and the Assistant Commissioner, Compliance and Enforcement for the State of New Jersey 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.

121. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Colorite agrees to accept service of process by mail in accordance with the Notice provisions of this Consent Decree with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of

the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### XXIII. INTEGRATION

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

#### XXIV. FINAL JUDGMENT

123. Upon the Effective Date of this Consent Decree, this Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. 3001-3308, and other applicable federal authority. The United States and NJDEP shall each be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

124. 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 United States, New Jersey and Colorite.

#### XXV. APPENDICES

125. The following appendices are attached to and incorporated into this Consent

Decree:

Appendix A is the Facility's SPCC Plan

Appendix B is the audit requirements

Appendix C is the SOW for the Suspension Monomer Recovery Improvement SEP

Appendix D is the SOW for the installation of the VOC Dryer CEMS SEP

Appendix E is the SOW for the installation of the VOC Incinerator CEMS Project

So entered in accordance with the foregoing this \_\_\_\_\_ day of \_\_\_\_\_,

200\_\_\_\_.

**COPY**

---

United States District Court Judge  
for the District of New Jersey

FOR PLAINTIFF, UNITED STATES OF AMERICA:

Date 8/15/08

\_\_\_\_\_  
Ronald J. Tenpas  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
10th & Pennsylvania Avenue, N.W.  
Washington, DC 20530

Date \_\_\_\_\_

9/15/08

\_\_\_\_\_  
Patricia McKenna  
Senior Attorney  
Scott Bauer  
Trial Attorney  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044

CHRISTOPHER J. CHRISTIE  
United States Attorney  
District of New Jersey

By:

\_\_\_\_\_  
Susan Steele  
Assistant United States Attorney  
District of New Jersey  
Bar Number - 7042  
Trenton, New Jersey

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date

8/13/08

Granta Y. Nakayama  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

\_\_\_\_\_  
Alan J. Steinberg  
Regional Administrator  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY, 10007-1866

Date 08-14-08

\_\_\_\_\_  
Eric Schaaf  
Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY 10007-1866

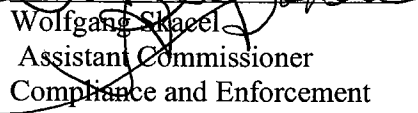
Date 8/8/08

Of Counsel:  
Flaire Mills,  
Chief, Air Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007-1866

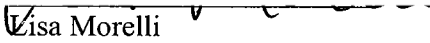
Mary C. McHale  
Assistant Regional Counsel  
Office of Regional Counsel, Air Branch  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007-1866



FOR THE STATE OF NEW JERSEY:

  
Wolfgang Skaeel  
Assistant Commissioner  
Compliance and Enforcement  
New Jersey Department of Environmental Protection

Date Aug. 11, 2008

  
Visa Morelli  
Deputy Attorney General  
New Jersey Office of the Attorney General  
Division of Law  
Department of Law and Public Safety

Date Aug 11, 2008

FOR COLORITE:

Robert W. Whetzel, Esq. *171AC (DE # 4694)* Date 8-11-08  
Richards, Layton & Finger, P.A.  
One Rodney Square  
P.O. Box 551  
Wilmington, DE 19899-0551

David C. Axmann Date 8-7-08  
General Manager  
Burlington Resins, Inc.  
d/b/a Colorite Specialty Resins  
P.O. Box 116, Beverly Road  
Burlington, NJ 08016-0116

**APPENDIX A**

**FILED UNDER SEAL**

## APPENDIX B

### ENVIRONMENTAL COMPLIANCE AUDITS - SCOPE OF WORK

#### A. General Provisions

1. This Appendix provides for completion of an independent audit of the compliance status of the Colorite Facility located in Burlington, New Jersey (“Facility”), as specified in the Consent Decree. The audit shall be completed to determine compliance at the Facility with the federal environmental statutes and their implementing regulations as well as the state and local analogues thereto, listed in paragraph A.3., below.
2. The audit shall include, but not be limited to, an evaluation of the Facility's: (a) operating procedures and practices; (b) sources of air pollutant emissions; (c) use and discharge of water; (d) generation, storage, handling, and disposal of hazardous waste; (e) air or water emissions control equipment; (f) operations and maintenance practices for any such controls and process units using such controls; (g) monitoring, recordkeeping and reporting procedures; and (h) other relevant factors that may relate to Colorite’s compliance with the statutes, rules, permits, and regulations listed in paragraph A.3., below, and the requirements of the Consent Decree that are effective as of the date of the audit. To conduct the audit, Colorite shall retain one or more third party audit firms that meet the criteria set forth in this Appendix. The audit firm(s) shall prepare a final Audit Report, which shall include the information described below.
3. The audit program shall be designed to assess regulatory compliance with the following statutes and their implementing regulations at the Facility:
  - a. The Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.;
  - b. The Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., as amended;
  - c. The Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended;
  - d. The Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., as amended;
  - e. The Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, including state implementation plan requirements approved by EPA under Section 110 of the Clean Air Act and relevant to the Facility;
  - f. The Emergency Planning and Community Right-To-Know Act., 42 U.S.C. § 11001 et seq., as amended; and
  - g. All other applicable state and/or local analogues of the federal statutes (and their implementing regulations) listed above, including, but not limited to, the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.
4. The audit shall be conducted by an independent environmental auditing firm, retained by Colorite. The audit firm shall concurrently submit a final report of its findings and recommendations to Colorite, EPA, and NJDEP (the “Audit Report”).
5. The requirements of this Appendix relating to the audit firm's qualifications, authority to conduct the audit, explicit tasks to be completed during the audit, and

production of the Audit Report shall be incorporated in any contract relating to the audit entered into by Colorite and the audit firm.

6. Because this audit is required by the Consent Decree settling EPA's enforcement action against Colorite, any violations by Colorite discovered pursuant to the audit are neither "voluntarily discovered" within the terms of EPA's revised Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Policy ("Audit Policy") nor voluntarily disclosed to EPA under EPA penalty policies. Accordingly, any such violations are ineligible for penalty mitigation or other favorable treatment under the Audit Policy. Colorite agrees not to attempt to use any state audit and/or privilege laws that would in any way restrict EPA's ability to obtain, review or use the Audit Report in any federal compliance or enforcement action. Any violation by a transferee arising after the date of transfer at the Facility previously but not currently owned and operated by Colorite which is discovered pursuant to the audit may be eligible for disclosure within the terms of EPA's Audit Policy.

#### **B. Audit Firm**

1. Colorite shall choose an audit firm which meets the criteria as set forth in paragraphs B.2. and B.3., below. Within 30 days of the Effective Date of the Consent Decree, Colorite shall notify EPA in writing of its audit firm choice, including a description of the audit firm's qualifications, and the certification required by paragraph B.3., below. EPA shall have 60 days to accept or reject Colorite's proposed audit firm. If EPA does not provide written notice to Colorite of its determination within 60 days, Colorite's proposed audit firm shall be deemed acceptable to EPA. If EPA rejects the proposed audit firm, Colorite shall propose one or more alternate audit firms for EPA's approval not later than 30 days after receipt of notice of EPA's determination.
2. The audit firm shall be familiar with environmental auditing and with the laws and regulations in paragraph A.3., above.
3. Neither the audit firm, nor any person presently employed by the firm, shall have been employed by Colorite to conduct an environmental audit or any other environmental compliance-related activities at the Facility at any time during the 5 year period prior to the Effective Date of the Consent Decree. Colorite shall require the audit firm to sign a certification to this effect.

#### **C. On-Site Audit**

Within 60 days of EPA's acceptance of Colorite's proposed audit firm, the auditor(s) shall conduct the on-site portion of the audit at the Facility.

#### **D. Records Review and Audit Report**

1. Colorite shall take all necessary measures to facilitate the audit firm in its full and independent assessment of the Facility in accordance with this Appendix.
2. Colorite shall grant the audit firm full access to, and unrestricted review of, all Colorite records, documents and information, in its entirety, that it requires to complete the audits.

3. The audit firm shall submit the Audit Report simultaneously to EPA, NJDEP, and Colorite within thirty days of completion of the on-site portion of the audit.
4. At the request of EPA and/or NJDEP, Colorite shall require the audit firm to submit to EPA and NJDEP any documents reviewed or produced by the audit firm pertaining to compliance at the Facility at the time of the audits.
5. The Audit Report shall describe in detail:
  - a. The procedures followed and information consulted and evaluated during the audit;
  - b. A specific statement of all items of non-compliance discovered during the audit;
  - c. To the extent possible, the date(s) on which such items of non-compliance commenced and were corrected; and
  - d. Recommendations on actions that may be necessary to achieve compliance with the federal, state, and local environmental laws identified in the Audit Report.
6. Colorite may, pursuant to 40 C.F.R. § 2.203(a), assert a business confidentiality claim covering all or part of the information contained in the Audit Report or other related documents requested by EPA in the manner described in 40 C.F.R. § 2.203(b). However, information contained in the Audit Report noting conditions that may, in the sole judgment of EPA, constitute regulatory violations at the Facility shall not be claimed as confidential business information by Colorite or its audit firm.
7. Colorite shall, as soon as practicable, correct any non-compliance identified in the Audit Report or otherwise discovered by Colorite through the audit process that may potentially pose an imminent threat to human health or the environment.
8. No later than 45 days after the audit firm's submission of the Audit Report, Colorite shall submit to EPA and NJDEP a statement listing each item of non-compliance identified in the Audit Report and specifying the particular action(s) taken by Colorite to correct it. If any non-compliance item has not yet been remedied, because the remedy requires more time to implement, a compliance schedule and plan shall be provided. An Authorized Official, on behalf of Colorite, shall certify to EPA in writing when correction of all such violations has been completed.

**E. Two year follow-up audit**

Two years following the submission of the Audit Report, Colorite shall schedule a follow-up audit by the same approved audit firm unless Colorite is requesting to use another auditor, in which case the approval process described in Section B, above, must be followed. The follow-up audit will consist of the same scope as the original audit and Colorite shall ensure that, within 60 days of the completion of the follow-up audit, an audit report is submitted to EPA and NJDEP that provides a detailed report of the audit findings and addresses any differences from the findings in the Audit Report.

## APPENDIX C

### SUSPENSION MONOMER RECOVERY IMPROVEMENT SEP SCOPE OF WORK

#### Project Overview:

For this Supplemental Environmental Project, Colorite shall install a second 7,500 gallon stripping vessel for line 3 of the facility's suspension plant. Colorite shall also install associated controls, instrumentation, and piping for the stripping vessel. The purpose of the project is to reduce residual vinyl chloride monomer in the PVC slurry.

#### Project Description:

Currently, the stripping operation for line 3 involves injecting steam into the slurry while under vacuum. This is accomplished batch-wise in a 7,500 gallon vessel. To affect an improvement in the stripping operation, a second identical stripping vessel will be installed to allow batches to be split between the two vessels. This process change will increase the amount of time that each PVC slurry particle containing vinyl chloride monomer is exposed to the full vacuum of the agitated vessel. In addition, this change will reduce problems associated with high levels of foam generated in the stripping vessel.

Colorite anticipates that the design, construction and implementation of this proposed project will take 12 months to finish. Modification of the facility's air operating permit may be required based upon the proposed project, in which case, the facility will obtain NJDEP pre-construction approval of its application before the construction/installation phase may begin.

#### Scope of Work:

- Remove building roof and make other necessary structural steel modifications
- Procure and install second stripping vessel in suspension plant
- Connect process piping, steam, vacuum lines etc. to second stripping vessel
- Install electronic controls and safety systems for second stripping vessel
- Design DCS monitoring screen to allow process variables to be monitored in real time and incorporate new stripping system into the DCS system
- Program DCS to allow electronic file storage of second stripping vessel

Capital Costs:

Based on an engineering review of the plant's current process system and operation, a cost of \$840,600 has been estimated to install the proposed project as described above, including mechanical/equipment, electrical, instrumentation and programming costs. In addition, there will be a one-time downtime cost of \$182,000 to Colorite in order to tie-in the project to the plant.

**Anticipated Timeline for Completion of the Project**

<b><u>Milestones</u></b>	<b><u>Milestone Time</u></b>	<b><u>Project Time</u></b>
<b>Milestone I</b> P and ID Design:	2 months	2 months
<b>Milestone II</b> Equipment Purchasing:	5 months	7 months
<b>Milestone III</b> Installation:	4 months	11 months
<b>Milestone IV</b> Implementation:	1 month	12 months



## **APPENDIX D**

### **VOC DRYER CEMS SEP - SCOPE OF WORK**

#### **Project Overview:**

For this Supplemental Environmental Project, Colorite shall install a continuous emission monitoring system (CEMS) on the Facility's Copolymer Dryer Stack. The purpose is to monitor Vinyl Chloride and Vinyl Acetate mass emissions from this stack (PT-12).

#### **Project Description:**

A new temperature controlled gas chromatograph ("GC") system will be installed on stack PT-12, which will be capable of quantifying vinyl chloride and vinyl acetate concentrations. A capillary column will separate the constituents, and then the quantity of each constituent will be determined by a photo ionization detector. Additionally, a mass flow meter will be installed on this stack to calculate mass emission rates of both constituents. The data from this analyzer will be collected and stored in a data acquisition computer.

Colorite anticipates that the procurement and installation of this proposed project will take 6 months to finish. The facility does not anticipate requiring any permits for the completion of this project, but should any be required, the project's completion date may be affected.

#### **Scope of Work:**

- Finalize and Approve System Drawings
- Procure and Install Copolymer Dryer VOC CEMS unit
- Commission CEMS unit
- Submit SOP for CEMS operation

#### **Capital Costs:**

Based on an engineering review of the plant's current process system and operation, a cost of \$186,000 has been estimated to install the proposed project as described above, including mechanical/equipment, electrical, instrumentation and programming costs.

## Anticipated Timeline for Completion of the Project

<u>Milestones</u>	<u>Milestone Time</u>	<u>Project Time</u>
<b>Milestone I</b> Drawings and Approval:	6 weeks	6 weeks
<b>Milestone II</b> Equipment Delivery:	16 weeks	22 weeks
<b>Milestone III</b> Installation:	4 weeks	6 months
<b>Milestone IV</b> Submit Standard Operating Procedure:	30 days	7 months

## **APPENDIX E**

### **VOC INCINERATOR CEMS NJ PROJECT - SCOPE OF WORK**

#### **Project Overview:**

For this New Jersey Project, Colorite shall install continuous emission monitoring systems (CEMS) on the Facility's Incinerator #1 and Incinerator #2 Stacks. The purpose is to monitor vinyl chloride and vinyl acetate emissions from the stacks PT-1 and PT-2.

#### **Project Description:**

A new temperature controlled gas chromatograph ("GC") system will be installed on stacks PT-1 and PT-2, which will be capable of quantifying vinyl chloride and vinyl acetate concentrations. A capillary column will separate the constituents, and then the quantity of each constituent will be determined by a photo ionization detector. The data from these analyzers will be collected and stored in a data acquisition computer.

The current ambient GC monitoring points on stacks PT-1 and PT-2 will be removed.

Colorite anticipates that the procurement and installation of this proposed project will take 6 months to finish. The facility does not anticipate requiring any permits for the completion of this project, but should any be required, the project's completion date may be affected.

#### **Scope of Work:**

- Submit GC Specifications to NJDEP
- Submit Performance Specification Test Protocol to NJDEP
- Finalize and Approve System Drawings
- Procure and Install Incinerator VOC CEMS Units
- Commission CEMS Units and disconnect existing GC sample lines
- Complete and Submit Initial Certification Report
- Submit SOP for CEMS Operation

#### **Capital Costs:**

Based on an engineering review of the plant's current process system and operation, a cost of \$287,000 has been estimated to install the proposed project as described above, including mechanical/equipment, electrical, instrumentation and programming costs.

**Anticipated Timeline for Completion of the Project**

<b><u>Milestones</u></b>	<b><u>Milestone Time</u></b>	<b><u>Project Time (starting after GC Specification Approval by NJDEP)</u></b>
<b>Milestone I</b> Submit GC Specifications:	60 days	
<b>Milestone II</b> Submit Performance Specification Test Protocol:	30 days	30 days
<b>Milestone III</b> Drawings and approval:	6 weeks	6 weeks
<b>Milestone IV</b> Equipment Delivery:	16 weeks	22 weeks
<b>Milestone V</b> Installation:	4 weeks	6 months
<b>Milestone VI</b> Complete Initial Certification Testing:	10 days	10 days after Milestone V (pending approval of Performance Spec Test Protocol)
<b>Milestone VII</b> Standard Operating Procedure:	30 days	7 months
<b>Milestone VIII</b> Submit Initial Certification Report:	30 days	30 days after Milestone VI (pending approval of Performance Spec Test Protocol)