

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 TYLER HOLDING COMPANY, INC., and)
 DELEK REFINING, LTD.,)
)
 Defendants.)
 _____)

CASE NO. 6:09cv319

CONSENT DECREE

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CONSENT DECREE

WHEREAS, plaintiff the United States of America (“Plaintiff” or “the United States”), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the United States Environmental Protection Agency (“EPA”), has simultaneously filed a Complaint and lodged this Consent Decree against defendants Tyler Holding Company, Inc. (“Tyler Holding”), formerly La Gloria Oil and Gas Company (“La Gloria”), and Delek Refining, Ltd. (“Delek”) for alleged environmental violations at a petroleum refinery in Tyler, Texas (the “Tyler Refinery”);

WHEREAS, La Gloria owned and operated the Tyler Refinery until 12:01 am on April 29, 2005, at which time Delek acquired the Tyler Refinery and contemporaneously, La Gloria changed its name to Tyler Holding;

WHEREAS, the United States alleges that Tyler Holding has violated and Delek continues to violate the following statutory and regulatory provisions:

- 1) New Source Performance Standards (“NSPS”) found at 40 C.F.R. Part 60, Subparts A and J (“Refinery NSPS Regulations”), promulgated under Section 111 of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7411, for fuel gas combustion devices; and
- 2) Leak Detection and Repair (“LDAR”) requirements promulgated pursuant to Sections 111 and 112 of the Act, and found at 40 C.F.R. Part 60, Subparts VV and GGG; and 40 C.F.R. Part 63, Subpart CC (“LDAR Regulations”);

WHEREAS, with respect to the provisions of Section V. C. (“Control of Acid Gas Flaring and Tail Gas Incidents”) of this Consent Decree, EPA maintains that “[i]t is the intent of the proposed standard [subsequently codified at 40 C.F.R. § 60.104] that hydrogen-sulfide-rich gases exiting the amine regenerator [or sour water stripper gases] be directed to an appropriate

recovery facility, such as a Claus sulfur plant,” see Office of Air Quality Planning and Standards, U.S. EPA, Background Information for Proposed New Source Performance Standards: Asphalt Concrete Plants, Petroleum Refineries, Storage Vessels, Secondary Lead Smelters and Refineries, Brass or Bronze Ingot Production Plants, Iron and Steel Plants, Sewage Treatment Plants (Vol. 1: Main Text), 28 (1973).

WHEREAS, Tyler Holding and Delek deny that they have violated the foregoing statutory and regulatory provisions and maintain that they have been and remain in compliance with all applicable statutes, regulations, and permits and are not liable for civil penalties and injunctive relief as alleged in the Complaint;

WHEREAS, EPA further maintains that the failure to direct hydrogen-sulfide-rich gases to an appropriate recovery facility -- and instead to flare such gases under circumstances that are not sudden or infrequent or that are reasonably preventable -- circumvents the purposes and intentions of the standards at 40 C.F.R. Part 60, Subpart J;

WHEREAS, EPA recognizes that “Malfunctions,” as defined in Paragraph 10 of this Consent Decree and 40 C.F.R. § 60.2, of the “Claus Sulfur Recovery Plants” or of “Upstream Process Units” may result in flaring of “Acid Gas” or “Sour Water Stripper Gas” on occasion, as those terms are defined herein, and that such flaring does not violate 40 C.F.R. § 60.11(d) if the owner or operator, to the extent practicable, maintains and operates such units in a manner consistent with good air pollution control practice for minimizing emissions during these periods;

WHEREAS, the United States is engaged in a federal strategy for achieving cooperative agreements with U.S. petroleum refineries to achieve across-the-board reductions in emissions;

WHEREAS, Tyler Holding and Delek consent to the simultaneous filing of the Complaint and lodging of this Consent Decree so as to accomplish their objective of cooperatively reconciling the goals of the United States, under the Clean Air Act, and Delek has already undertaken or agrees to undertake the installation of air pollution control equipment and enhancements to its air pollution management practices set forth in this Consent Decree to reduce air emissions;

WHEREAS, Delek has completed a number of affirmative relief projects at the Tyler Refinery to address bypass and other problems at the FCCU, CO boiler, and SRP including:

- 1) Minimizing Electrical Power Outages. In order to ensure that the Tyler Refinery has a more reliable power supply, Delek has installed a 138 kilovolt substation within the Tyler Refinery boundary (the “Delek substation”) which draws power from the Oncor Electric Delivery Company LLC (“Oncor”) 138 kilovolt transmission lines at two independent points upstream of the existing Oncor East Texas substation (the “Oncor substation”);
- 2) Avoiding Equipment Malfunctions and Maintenance. In order to avoid recurrence of historic emissions events resulting from equipment Malfunction (and subsequent maintenance of the equipment), Delek has:
 - a. Installed isolation valves between the CO boiler and the electrostatic precipitator to allow for maintenance on the electrostatic precipitator without interruption of the CO boiler.
 - b. Installed an atmospheric steam relief system to prevent development of excess pressure in the steam system and the subsequent venting of excess gases in the CO boiler.

c. Installed drains on the Wet Gas Compressor manifold and modified operating procedures to minimize liquids from entering the Wet Gas Compressor on startup; and

3) Revised Operating Procedures and Employee Training. Delek has revised the operating procedures related to the FCCU and CO Boiler. The revised operating procedures include implementing a procedure that reduces the FCCU charge rate and adding a combustion promoter to the FCCU catalyst to minimize formation of CO in the FCCU regenerator. Delek has trained its employees on the new procedures.

4) Installing a Second Claus Sulfur Recovery Unit (SRU) and a Tail Gas Treatment Unit. Delek purchased, refurbished, permitted, installed, and operates a second Claus sulfur train and a Tail Gas Treatment Unit capable of handling the sulfur recovery requirements of the Tyler Refinery. The second SRU provides additional capacity to address Malfunctions, Startups, Shutdowns, and maintenance activities that occur at the Tyler Refinery.

WHEREAS, Delek estimates that the affirmative relief and environmental projects identified above will reduce annual emissions from the Refinery by the following amounts:

1) sulfur dioxide (“SO₂”) by approximately 100 tons; and 2) carbon monoxide (“CO”) by approximately 190 tons.

WHEREAS, Tyler Holding and Delek have waived any applicable federal or state requirements of statutory notice of the alleged violations;

WHEREAS, the Parties agree that: (a) settlement of the matters set forth in the Complaint (filed simultaneously herewith) is in the best interests of the Parties and the public; and (b) entry of this Consent Decree without litigation is the most appropriate means of resolving this matter;

WHEREAS, the Parties recognize, and the Court by entering the Consent Decree finds, that the Consent Decree has been negotiated at arms length and in good faith and that the Consent Decree is fair, reasonable, and in the public interest;

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon the consent and agreement of the Parties to the Consent Decree, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

VI. This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355. In addition, this Court has jurisdiction over the subject matter of this action pursuant to Sections 113(b) and 167 of the CAA, 42 U.S.C. § 7413(b) and 7477. The Complaint states a claim upon which relief may be granted for injunctive relief against Delek and civil penalties against Tyler Holding under the Clean Air Act. Authority to bring this suit is vested in the United States Department of Justice. See, e.g., 28 U.S.C. §§ 516 and 519, and Section 305 of the CAA, 42 U.S.C. § 7605.

VII. Venue is proper in the Eastern District of Texas pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a). Tyler Holding and Delek consent to the personal jurisdiction of this Court and waive any objections to venue in this District.

VIII. Notice of the commencement of this action has been given to the State of Texas under Sections 113(a)(1) and 113(b) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(1) and 7413(b).

II. APPLICABILITY AND BINDING EFFECT

IX. The provisions of the Consent Decree shall apply to the Tyler Refinery, located at 1702 East Commerce Street, in Tyler, Smith County, Texas. The provisions of the Consent Decree shall be binding upon the United States, Tyler Holding and Delek, and their successors and assigns, and other persons or entities bound by law.

X. Tyler Holding and Delek agree not to contest the validity of the Consent Decree in any subsequent proceeding to implement or enforce its terms.

XI. Delek shall give written notice of the Consent Decree to any successors in interest prior to the transfer of ownership or operation of any portion of the Tyler Refinery and shall provide a copy of the Consent Decree to any successor in interest. Delek shall notify the United States, in accordance with the notice provisions set forth in Paragraph 116 (Notice), of any successor in interest at least thirty (30) Days prior to any such transfer.

7. Delek shall condition any transfer, in whole or in part, of ownership of, operation of, or other interest (exclusive of any non-controlling, non-operational shareholder interest) in, the Tyler Refinery upon the execution by the transferee of a modification to the Consent Decree that makes the transferee responsible for complying with the terms and conditions of the Consent Decree that apply to the Tyler Refinery.

I. By no later than 30 Days prior to any transfer, Delek shall: (1) notify the United States

of the proposed transfer and of the specific Consent Decree provisions that Delek proposes the transferee assume; and (2) submit to the United States a certification from the transferee that the transferee has the financial and technical ability to assume the obligations and liabilities of this Consent Decree that apply to the Tyler Refinery.

b. By no later than thirty (30) Days after the submission to the United States of the notice and certification required by the previous sentence: (1) the United States shall notify Delek that the United States does not agree to modify the Consent Decree to make the transferee responsible for complying with the terms and conditions of the Consent Decree that apply to the Tyler Refinery, or (2) the United States, Delek, and the transferee shall file with the Court a joint motion requesting the Court to approve a modification substituting the transferee for Delek as the Defendant responsible for complying with the terms and conditions of the Consent Decree that apply to the Tyler Refinery.

c. If Delek does not secure the agreement of the United States to a joint motion within the sixty (60) day period, then Delek and the transferee may file a motion seeking to make the transfer without the agreement of the United States. The United States may file an opposition to the motion. Delek shall not be released from the obligations and liabilities of any provision of this Consent Decree unless and until the Court grants a motion substituting the transferee as the Defendant responsible for complying with the terms and conditions of the Consent Decree that apply to the Tyler Refinery. Such a motion shall be granted unless Delek and the transferee fail to show that the transferee has the financial and technical ability to assume the obligations and liabilities of the Consent Decree that apply to the Tyler Refinery.

8. Except as provided in Paragraph 7, above, Delek shall be solely responsible for ensuring that performance of the work required by this Consent Decree is undertaken in accordance with the deadlines and requirements contained in this Consent Decree and any attachments hereto. No later than the execution of any contract with a consulting or contracting firm that is retained to perform work required by this Consent Decree, Delek shall provide a copy of this Consent Decree to the consulting or contracting firm that is retained. No later than thirty (30) Days after the Date of Lodging of the Consent Decree, Delek also shall provide a copy of this Consent Decree to each consulting or contracting firm that Delek already has retained to perform the work required by this Consent Decree. Copies of the Consent Decree do not need to be supplied to firms who are retained to supply materials or equipment to satisfy requirements of this Consent Decree.

III. OBJECTIVES

9. It is the purpose of the Parties in this Consent Decree to further the objectives of the Clean Air Act.

IV. DEFINITIONS

10. Unless otherwise defined herein, terms used in the Consent Decree shall have the meaning given to those terms in the Clean Air Act, and the implementing regulations promulgated thereunder. The following terms used in this Consent Decree shall be defined, for purposes of the Consent Decree and the reports and documents submitted pursuant hereto, as follows:

A. "Acid Gas" or "AG" shall mean any gas that contains hydrogen sulfide and is generated at the Tyler Refinery by the regeneration of an amine scrubber solution, but does not include Tail Gas.

B. "Acid Gas Flaring" or "AG Flaring" shall mean the combustion of Acid Gas and/or Sour Water Stripper Gas in an AG Flaring Device.

C. "Acid Gas Flaring Device" or "AG Flaring Device" shall mean any device used to combust Acid Gas and/or Sour Water Stripper Gas, except facilities in which gases are combusted to produce sulfur or sulfuric acid. The AG Flaring Devices currently in service at the Tyler Refinery are identified in Appendix A. To the extent that, during the duration of the Consent Decree, the Tyler Refinery utilizes any AG Flaring Devices other than those specified in Appendix A to combust Acid Gas and/or Sour Water Stripper Gas, those AG Flaring Devices shall be subject to the requirements of this Consent Decree.

D. "Acid Gas Flaring Incident" or "AG Flaring Incident" shall mean the continuous or intermittent combustion of Acid Gas and/or Sour Water Stripper Gas that results in the emission of sulfur dioxide equal to, or in excess of, five hundred (500) pounds in any twenty-four (24) hour period; provided, however, that if five hundred (500) pounds or more of sulfur dioxide have been emitted in a twenty-four (24) hour period and flaring continues into subsequent, contiguous, non-overlapping twenty-four (24) hour period(s), each period of which results in emissions equal to, or in excess of five hundred (500) pounds of sulfur dioxide, then only one AG Flaring Incident shall have occurred. Subsequent, contiguous, non-overlapping periods are measured from the initial commencement of flaring within the AG Flaring Incident.

E. "CEMS" shall mean continuous emissions monitoring system.

F. "Consent Decree" or "Decree" shall mean this Consent Decree, including any and all appendices attached to the Consent Decree.

G. "CO" shall mean carbon monoxide.

H. "Date of Lodging" or "Date of Lodging of the Consent Decree" shall mean the date the Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Eastern District of Texas.

I. "Date of Entry" or "Date of Entry of the Consent Decree" shall mean the date the Consent Decree is entered as a final judgment by the United States District Court for the Eastern District of Texas.

J. "Day" or "Days," whether or not capitalized, shall mean a calendar day or days, unless "business days" are expressly specified.

K. "Delek" shall mean Delek Refining, Ltd. and its successors and assigns.

L. "Flaring Device" shall mean an AG and/or an HC Flaring Device.

M. "FCCU" shall mean a fluidized catalytic cracking unit and its regenerator and associated CO boiler(s) where present.

N. "Hydrocarbon Flaring" or "HC Flaring" shall mean the combustion of refinery-generated gases, except for Acid Gas and/or Sour Water Stripper Gas and/or Tail Gas, in a Hydrocarbon Flaring Device.

O. "Hydrocarbon Flaring Device" or "HC Flaring Device" shall mean any device used to safely control (through combustion) any excess volume of a refinery-generated gas other than Acid Gas and/or Sour Water Stripper Gas and/or Tail Gas. The HC Flaring Devices currently in service at the Tyler Refinery are listed in Appendix B to the Consent Decree. To the extent that,

during the duration of the Consent Decree, the Tyler Refinery utilizes HC Flaring Devices other than those specified in Appendix B to combust any excess volume of a refinery-generated gas other than Acid Gas and/or Sour Water Stripper Gas and/or Tail Gas, those HC Flaring Devices shall be subject to the requirements of this Consent Decree.

P. “Hydrocarbon Flaring Incident” or “HC Flaring Incident” shall mean the continuous or intermittent Hydrocarbon Flaring at a Hydrocarbon Flaring Device that results in the emission of sulfur dioxide equal to, or greater than five hundred (500) pounds in a 24-hour period provided, however, that if five-hundred (500) pounds or more of sulfur dioxide have been emitted in a twenty-four (24) hour period and flaring continues into subsequent, contiguous, non-overlapping twenty-four (24) hour period(s), each period of which results in emissions equal to, or in excess of five-hundred (500) pounds of sulfur dioxide, then only one HC Flaring Incident shall have occurred. Subsequent, contiguous, non-overlapping periods are measured from the initial commencement of flaring within the HC Flaring Incident.

Q. “La Gloria” shall mean La Gloria Oil and Gas Company and its successors and assigns.

R. “Malfunction” shall mean, as specified in 40 C.F.R. § 60.2, “any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.”

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

T. “Parties” shall mean the United States, Tyler Holding, and Delek.

U. “Root Cause” shall mean the primary cause(s) of AG Flaring Incident(s), Hydrocarbon Flaring Incident(s), or Tail Gas Incident(s), as determined through a process of investigation.

V. “Shutdown” shall mean the cessation of operation of an affected facility for any purpose.

W. “Sour Water Stripper Gas” or “SWS Gas” shall mean the gas produced by the process of stripping or scrubbing refinery sour water.

X. “Startup” shall mean the setting in operation of an affected facility for any purpose.

Y. “Sulfur Recovery Plant” or “SRP” shall mean a process unit that recovers sulfur from hydrogen sulfide by a vapor-phase catalytic reaction of sulfur dioxide and hydrogen sulfide.

Z. “Sulfur Recovery Unit” or “SRU” shall mean a single component of a Sulfur Recovery Plant, commonly referred to as a Claus train.

AA. “Tail Gas” or “TG” shall mean exhaust gas from the Claus trains and/or the Tail Gas Unit section of the SRP.

BB. “Tail Gas Unit” or “TGU” shall mean a control system utilizing a technology for reducing emissions of sulfur compounds from a Sulfur Recovery Plant.

CC. “Tail Gas Incident” shall mean combustion of Tail Gas that either is:

i. combusted in a flare and results in 500 pounds or more of SO₂ emissions in any 24-hour period; or

ii. combusted in a thermal incinerator and results in excess emissions of 500 pounds or more of SO₂ in any 24-hour period. Only those time periods that are in excess of a SO₂ concentration of 250 ppm (rolling 12-hour average) shall be used to determine the amount of excess SO₂ emissions from the incinerator.

Delek shall use good engineering judgment and other monitoring data to estimate emissions during periods in which the SO₂ continuous emission analyzer has exceeded the range of the instrument or is out of service.

DD. “TCEQ” shall mean the Texas Commission on Environmental Quality.

EE. “Tyler Holding” shall mean Tyler Holding Company, Inc. and its successors and assigns.

FF. “Upstream Process Units” shall mean all amine contactors, amine absorbers, amine scrubbers, amine regenerators, and sour water strippers at the Tyler Refinery, as well as all process units at these refineries that produce gaseous or aqueous waste streams that are processed at amine contactors, amine scrubbers, or sour water strippers.

V. AFFIRMATIVE RELIEF AT THE REFINERY

A. FLARING DEVICES

11. **NSPS Applicability.** On and after the Date of Entry of the Consent Decree, each flare that is used to combust refinery fuel gas at the Tyler Refinery shall be an “affected facility,” as that term is used in 40 C.F.R. Part 60, Subparts A and J, and shall be subject to, and comply with, the requirements of NSPS Subparts A and J for fuel gas combustion devices. The flares presently at the Tyler Refinery are listed in Appendices A and B. For the purpose of determining compliance with the SRP emission limits Delek shall apply the “startup” and “shutdown” provisions set forth in NSPS Subpart A to the SRP but not to the independent startup or shutdown of its corresponding control device(s) (e.g., TGU). However, the malfunction

exemption set forth in NSPS Subpart A shall apply to both the SRP and its control device(s) (e.g., TGU).

12. **Good Air Pollution Control Practices, PMO Plan.**

a. On and after the Date of Entry, Delek at all times and to the extent practicable, including during periods of Startup, Shutdown, and/or Malfunction, shall comply with NSPS obligations to implement good air pollution control practices to minimize emissions from its HC and AG Flaring Devices consistent with, and as required by, 40 C.F.R. § 60.11(d).

b. By no later than six months after Date of Entry, Delek shall submit to EPA, a summary of its plan for enhanced maintenance and operation of its SRP, any supplemental control devices, and the appropriate Upstream Process Units that have been or will be implemented. This plan shall be termed a Preventive Maintenance and Operation Plan (“PMO Plan”). The PMO Plan shall be a compilation of Delek’s approaches for exercising good air pollution control practices and for minimizing SO₂ emissions at the Tyler Refinery. The PMO Plan shall provide for continuous operation of Delek’s SRPs between scheduled maintenance turnarounds with minimization of emissions. The PMO Plan shall include, but not be limited to, sulfur shedding procedures, Startup and Shutdown procedures, hot standby procedures, emergency procedures and schedules to coordinate maintenance turnarounds of the SRP Claus trains and any supplemental control device to coincide with scheduled turnarounds of major Upstream Process Units. The PMO Plan shall have as a goal the elimination of Acid Gas Flaring. Delek shall comply with the PMO Plan at all times, including periods of Startup, Shutdown, and Malfunction of its SRPs, consistent with 40 C.F.R. § 60.11(d). Delek’s changes

to a PMO Plan related to minimizing Acid Gas Flaring and/or SO₂ emissions shall be summarized and reported to EPA on an annual basis.

c. EPA does not, by its review of a PMO Plan and/or by its failure to comment on a PMO Plan, warrant or aver in any manner that any of the actions that Delek may take pursuant to such PMO Plan will result in compliance with the provisions of any applicable permits, the Clean Air Act or its implementing regulations, or any other applicable federal, state, or local law or regulation. Delek shall remain solely responsible for compliance with all applicable permits, the Clean Air Act and its implementing regulations, and such other laws and regulations.

13. **Compliance with the Emission Limit at 40 C.F.R. § 60.104(a)(1).**

a. Continuous or Intermittent, Routinely-Generated Refinery Fuel Gases. For continuous or intermittent, routinely-generated refinery gases that are combusted in any of the Flaring Devices, Delek shall comply with the emission limit at 40 C.F.R. § 60.104(a)(1) on and after the Date of Entry.

b. Non-Routinely Generated Gases. The combustion of gases generated by the Startup, Shutdown, or Malfunction of a refinery process unit or released to a Flaring Device as a result of relief valve leakage or other emergency Malfunction are exempt from the requirement to comply with 40 C.F.R. § 60.104(a)(1).

14. **Compliance Methods for Flaring Devices.**

a. By no later than twelve (12) months from the Date of Entry, for each Flaring Device, Delek shall implement one or any combination of the following compliance methods:

(i) Operate and maintain a flare gas recovery system to control continuous or routine combustion in the Flaring Device. Use of a flare gas recovery system on a flare obviates

the need to continuously monitor and maintain records of hydrogen sulfide in the gas as otherwise required by 40 C.F.R. §§ 60.105(a)(4) and 60.7;

(ii) Operate the Flaring Device as a fuel gas combustion device and comply with NSPS monitoring requirements by use of a CEMS pursuant to 40 C.F.R. § 60.105(a)(4) or with a predictive monitoring system approved by EPA as an alternative monitoring plan pursuant to 40 C.F.R. § 60.13(i); or

(iii) Eliminate the routes of continuous or intermittent, routinely-generated fuel gases to a Flaring Device and operate the Flaring Device such that it receives only process upset gases, fuel gas released as a result of relief valve leakage, gases released due to other emergency malfunctions, or vapors that are collected and combusted to comply with the wastewater provisions in 40 C.F.R. §§ 60.692, 61.343 through 61.348, or 63.647.

b. By no later than twelve (12) months from the Date of Entry, Delek shall certify to EPA that Delek is using one or a combination of the above three compliance methods for all Flaring Devices and state for each Flaring Device which method, or what combination of methods, has been implemented.

c. During the term of the Consent Decree, Delek may change the compliance method for any Flaring Device provided that Delek notifies EPA of a change in compliance method in the next semi-annual progress report required under Paragraph 48(a) following the change.

B. CONTROL OF ACID GAS FLARING AND TAIL GAS INCIDENTS

15. **Flaring History and Corrective Measures.** Tyler Holding conducted an analysis of previous AG Flaring Incidents that occurred at the Tyler Refinery from January 1, 2002 through October 31, 2004, and submitted a report on such incidents to EPA. Delek has implemented (or

is in the process of identifying and implementing) corrective actions to minimize the number and duration of AG Flaring Incidents, as described in the Whereas Clauses.

16. **Future Acid Gas Flaring and Tail Gas Incidents.** On and after the Date of Entry, Delek shall investigate the cause of AG Flaring and Tail Gas Incidents that occur at the Tyler Refinery, take reasonable steps to correct the conditions that have caused or contributed to such AG Flaring and Tail Gas Incidents, and minimize AG Flaring and Tail Gas Incidents. Delek shall follow the procedures in Paragraph 17 to evaluate whether future AG Flaring Incidents are due to Malfunctions or are subject to stipulated penalties. Delek shall undertake the investigative and evaluative procedures in Paragraph 17 to assess whether Tail Gas Incidents, as described in Paragraph 27, are due to Malfunctions or are subject to stipulated penalties. The procedures, as set forth below, require a root cause analysis and corrective action for all types of AG Flaring and Tail Gas Incidents and require stipulated penalties for AG Flaring and Tail Gas Incidents if the root causes were not due to Malfunctions.

17. **Investigation and Reporting.** No later than forty-five (45) Days following the end of an AG Flaring Incident that occurred on and after the Date of Entry, Delek shall submit to EPA a report that sets forth the following:

a. The date and time that the AG Flaring Incident started and ended. To the extent that the AG Flaring Incident involved multiple releases either within a twenty-four (24) hour period or within subsequent, contiguous, non-overlapping twenty-four (24) hour periods, Delek shall set forth the starting and ending dates and times of each release;

b. An estimate of the quantity of sulfur dioxide that was emitted and the calculations that were used to determine that quantity;

- c. The steps, if any, that Delek took to limit the duration and/or quantity of sulfur dioxide emissions associated with the AG Flaring Incident;
- d. A detailed analysis that sets forth the Root Cause and all significant contributing causes of that AG Flaring Incident, to the extent determinable;
- e. An analysis of the measures, if any, that are available to reduce the likelihood of a recurrence of an AG Flaring Incident resulting from the same Root Cause or significant contributing causes in the future. If two or more reasonable alternatives exist to address the Root Cause, the analysis shall discuss the alternatives, that are available, the probable effectiveness and cost of the alternatives, and whether or not an outside consultant should be retained to assist in the analysis. Possible design, operation, and maintenance changes shall be evaluated. If Delek concludes that corrective action(s) is (are) required under Paragraph 18, the report shall include a description of the action(s) and, if not already completed, a schedule for its (their) implementation, including proposed commencement and completion dates. If Delek concludes that corrective action is not required under Paragraph 18, the report shall explain the basis for that conclusion;
- f. A statement that: (a) specifically identifies each of the grounds for stipulated penalties in Section V. C. of this Decree and describes whether or not the AG Flaring Incident falls under any of those grounds, provided, however, that Delek may choose to submit with the Root Cause report a payment of stipulated penalties in the nature of settlement without the need to specifically identify the grounds for the penalty. Such payment of stipulated penalties shall not constitute an admission of liability, nor shall it raise any presumption whatsoever about the nature, existence, or strength of Delek's potential defenses; (b) if an AG Flaring Incident falls

under Paragraph 22 of this Decree, describes which Subparagraph (22.a or 22.b) applies and why; and (c) if an AG Flaring Incident falls under either Paragraph 21.a or 21.b, states whether or not Delek asserts a defense to the Flaring Incident, and if so, a description of the defense;

g. To the extent that investigations of the causes and/or possible corrective actions still are underway on the due date of the report, a statement of the anticipated date by which a follow-up report fully conforming to the requirements of this Paragraph will be submitted; provided, however, that if Delek has not submitted a report or a series of reports containing the information required to be submitted under this Paragraph within forty-five (45) Days (or such additional time as EPA may allow) after the due date for the initial report for the AG Flaring Incident, the stipulated penalty provisions of Section VIII shall apply for failure to timely submit the report. Nothing in this Paragraph shall be deemed to excuse Delek from its investigation, reporting, and corrective action obligations under this Section V. B. for any AG Flaring Incident which occurs after another incident for which Delek has requested an extension of time under this Paragraph; and

h. To the extent that completion of the implementation of corrective action(s), if any, is not finalized at the time of the submission of the report required under this Paragraph, then, by no later than thirty (30) Days after completion of the implementation of corrective action(s), Delek shall submit a report identifying the corrective action(s) taken and the dates of commencement and completion of implementation.

18. **Corrective Action**

a. In response to any AG Flaring Incident occurring on and after the Date of Entry, Delek shall take, as expeditiously as practicable, such interim and/or long-term corrective actions, if

any, as are consistent with good engineering practice to minimize the likelihood of a recurrence of the Root Cause and all significant contributing causes of that AG Flaring Incident.

b. If EPA does not notify Delek in writing within forty-five (45) Days of receipt of the report(s) required by Paragraph 17 that it objects to one or more aspects of the proposed corrective action(s) and schedule(s) of implementation, if any, then that (those) action(s) and schedule(s) shall be deemed acceptable for purposes of compliance with Paragraph 18 of this Decree. EPA does not, however, by its failure to object to any corrective action that Delek may take in the future, warrant or aver in any manner that any corrective actions in the future will result in compliance with the provisions of any applicable permits, the Clean Air Act or its implementing regulations, or any other applicable federal, state, or local law or regulation.

c. If EPA objects, in whole or in part, to the proposed corrective action(s) and/or the schedule(s) of implementation or, where applicable, to the absence of such proposal(s) and/or schedule(s), it shall notify Delek and explain the basis for its objection (s) in writing within forty-five (45) Days following receipt of the report(s) required by Paragraph 17, and Delek shall respond within thirty (30) Days to EPA's objection(s).

d. Nothing in this Section V. B. shall be construed to limit the right of Delek to take such corrective actions as it deems necessary and appropriate immediately following an AG Flaring Incident or in the period during preparation and review of any reports required under this Paragraph.

C STIPULATED PENALTIES

19. **Stipulated Penalties for Acid Gas Flaring Incidents.** The provisions of Paragraphs 19 - 25 are to be used by EPA in assessing stipulated penalties for Delek for AG Flaring

Incidents that occur on and after the Date of Entry of this Decree and by the United States in demanding stipulated penalties under Section V. C. The provisions of Paragraphs 19 - 25 are intended to implement the process outlined in the logic diagram attached hereto as Appendix C to this Decree, and they do not apply to HC Flaring Incidents.

20. The stipulated penalty provisions of Section VIII shall apply to any AG Flaring Incident for which the Root Cause is one or more of the acts, omissions, or events listed in a., b., c., or d. below. Except for the areas provided in Paragraph 23, Delek shall have no defenses to a demand for stipulated penalties for an Acid Gas Flaring Incident falling under this Paragraph.

a. Error resulting from careless operation by the personnel charged with the responsibility for the Sulfur Recovery Plant, Sulfuric Acid Plant, TGU, or Upstream Process Units;

b. Failure to follow written procedures;

c. A failure of equipment that is due to a failure by Delek to operate and maintain that equipment in a manner consistent with good engineering practice; or

d. Shutdown of the SRP due to electrical power outages caused by the failure of electrical supply generated by the Oncor East Texas substation.

21. If the AG Flaring Incident is not a result of one of the Root Causes identified in Paragraph 20, then the stipulated penalty provisions of Section VIII shall apply if the AG Flaring Incident:

a. Results in emissions of sulfur dioxide at a rate greater than twenty (20) pounds per hour continuously for three (3) consecutive hours or more and Delek failed to act in accordance with its Preventive Maintenance and Operation Plan and/or to take any action during the AG

Flaring Incident to limit the duration and/or quantity of SO₂ emissions associated with such incident; or

b. Causes the total number of AG Flaring Incidents in a rolling twelve (12) month period to exceed five (5).

22. With respect to any AG Flaring Incident not identified in Paragraphs 20 and 21, the following provisions shall apply:

a. First Time: If the Root Cause of the AG Flaring Incident was not a recurrence of the same Root Cause that resulted in a previous AG Flaring Incident that occurred after the Date of Entry, then:

(i) If the Root Cause of the AG Flaring Incident was sudden, infrequent, and not reasonably preventable through the exercise of good engineering practice, then that cause shall be designated as an agreed-upon Malfunction for purposes of reviewing subsequent AG Flaring Incidents;

(ii) If the Root Cause of the AG Flaring Incident was sudden and infrequent, and was reasonably preventable through the exercise of good engineering practice, then Delek shall implement corrective action(s) pursuant to Paragraph 18, and the stipulated penalty provisions of Section VIII shall not apply.

b. Recurrence: If the Root Cause is a recurrence of the same Root Cause that resulted in a previous AG Flaring Incident that occurred after the Date of Entry, then Delek shall be liable for stipulated penalties under Section VIII unless:

(i) the Flaring Incident resulted from a Malfunction; or

- (ii) the Root Cause previously was designated as an agreed-upon Malfunction under Paragraph 22.a(i); or
- (iii) the AG Flaring Incident had as its Root Cause the recurrence of a Root Cause for which Delek had previously developed, or was in the process of developing, a corrective action plan and for which Delek had not yet completed implementation.

23. **Defenses.** Delek may raise the following affirmative defenses in response to a demand by the United States for stipulated penalties:

- a. Force majeure.
- b. As to Paragraph 20, the AG Flaring Incident does not meet the identified criteria.
- c. As to Paragraph 21, Malfunction.
- d. As to Paragraph 22, the Incident does not meet the identified criteria and/or was due to a Malfunction.

24. In the event a dispute under Paragraphs 19 through 23 is brought to the Court pursuant to the Dispute Resolution provisions of this Consent Decree, Delek may also assert a Startup, Shutdown and/or upset defense (including of an individual SRU within an SRP), but the United States shall be entitled to assert that such defenses are not available. If Delek prevails in persuading the Court that the defenses of Startup, Shutdown and/or upset are available for AG Flaring Incidents under 40 C.F.R. § 60.104(a)(1), Delek shall not be liable for stipulated penalties for emissions resulting from such Startup, Shutdown and/or upset. If the United States prevails in persuading the Court that the defenses or Startup, Shutdown and/or upset are not available, Delek shall be liable for such stipulated penalties.

25. Other than for a Malfunction or force majeure, if no AG Flaring Incident occurs at the Tyler Refinery for a rolling 36-month period, then the stipulated penalty provisions of Paragraph 54 shall no longer apply to the Tyler Refinery. EPA may elect to reinstate the stipulated penalty provision if the Refinery has an AG Flaring Incident which would otherwise be subject to stipulated penalties. EPA's decision shall not be subject to dispute resolution. Once EPA provides notice of reinstatement, the stipulated penalty provision shall apply to subsequent AG Flaring Incidents for the remaining life of this Decree for the Tyler Refinery.

26. **Emission Calculations.**

a. Calculation of the Quantity of Sulfur Dioxide Emissions Resulting from AG Flaring.

For purposes of this Consent Decree, the quantity of SO₂ emissions resulting from an AG Flaring Incident shall be calculated by the following formula:

$$\text{Tons of SO}_2 = [\text{FR}][\text{TD}][\text{ConcH}_2\text{S}][8.44 \times 10^{-5}].$$

The quantity of SO₂ emitted shall be rounded to one decimal point. (Thus, for example, for a calculation that results in a number equal to 10.050 tons, the quantity of SO₂ emitted shall be rounded to 10.1 tons.) For purposes of determining the occurrence of, or the total quantity of SO₂ emissions resulting from, an AG Flaring Incident that is comprised of intermittent AG Flaring, the quantity of SO₂ emitted shall be equal to the sum of the quantities of SO₂ flared during each such period of intermittent AG Flaring.

b. Calculation of the Rate of SO₂ Emissions During AG Flaring. For purposes of this Consent Decree, the rate of SO₂ emissions resulting from an AG Flaring Incident shall be expressed in terms of pounds per hour and shall be calculated by the following formula:

$$\text{ER} = [\text{FR}][\text{ConcH}_2\text{S}][0.169].$$

The emission rate shall be rounded to one decimal point. (Thus, for example, for a calculation that results in an emission rate of 19.95 pounds of SO₂ per hour, the emission rate shall be rounded to 20.0 pounds of SO₂ per hour; for a calculation that results in an emission rate of 20.05 pounds of SO₂ per hour, the emission rate shall be rounded to 20.1.)

c. Meaning of Variables and Derivation of Multipliers Used in the Equations in this

Paragraph:

ER =	Emission Rate in pounds of SO ₂ per hour
FR =	Average Flow Rate to Flaring Device(s) during Flaring Incident in standard cubic feet per hour
TD =	Total Duration of Flaring Incident in hours
ConcH ₂ S =	Average Concentration of Hydrogen Sulfide in gas during Flaring Incident (or immediately prior to Flaring Incident if all gas is being flared) expressed as a volume fraction (scf H ₂ S/scf gas)
$8.44 \times 10^{-5} =$	$[\text{lb mole H}_2\text{S}/379 \text{ scf H}_2\text{S}][64 \text{ lbs SO}_2/\text{lb mole H}_2\text{S}][\text{Ton}/2000 \text{ lbs}]$
0.169 =	$[\text{lb mole H}_2\text{S}/379 \text{ scf H}_2\text{S}][1.0 \text{ lb mole SO}_2/1 \text{ lb mole H}_2\text{S}][64 \text{ lb SO}_2/1.0 \text{ lb mole SO}_2]$

The flow of gas to the AG Flaring Device(s) (“FR”) shall be as measured by the relevant flow meter or reliable flow estimation parameters. Hydrogen sulfide concentration (“ConcH₂S”) shall be determined from the SRP feed gas analyzer, from knowledge of the sulfur content of the process gas being flared, by direct measurement by Tutwiler or Draeger tube analysis or by any other method approved by EPA. In the event that any of these data points is unavailable or inaccurate, the missing data point(s) shall be estimated according to best engineering judgment. The report required under Paragraph 17 shall include the data used in the calculation and an explanation of the basis for any estimates of missing data points.

27. Tail Gas Incidents.

a. Investigation, Reporting, Corrective Action, and Stipulated Penalties. For Tail Gas Incidents, Delek shall follow the same investigative, reporting, corrective action, and assessment of stipulated penalty procedures as those set forth in Paragraphs 17 through 26 for AG Flaring Incidents. Those procedures shall be applied to TGU Shutdowns, bypasses of a TGU, or other events which result in a Tail Gas Incident, including unscheduled Shutdowns of the SRP.

b. Calculation of the Quantity of SO₂ Emissions Resulting from a Tail Gas Incident.

For the purposes of this Consent Decree, the quantity of SO₂ emissions resulting from a Tail Gas Incident shall be calculated by one of the following methods, based on the type of event:

- i. If Tail Gas is combusted in a flare, the SO₂ emissions are calculated using the methods outlined in Paragraph 26; or
- ii. If Tail Gas exceeding the 250 ppmvd (NSPS J) limit is emitted from a monitored SRP incinerator, then the following formula applies:

$$ER_{TGI} = \frac{TD_{TGI}}{\sum_{i=1} [FR_{Inc.}]_i [Conc. SO_2 - 250]_i [0.169 \times 10^{-6}] \left[\frac{20.9 - \% O_2}{20.9} \right]_i}$$

Where:

ER_{TGI} = Emissions from TGU at the SRP incinerator, pounds of SO₂ over a 24 hour period

TD_{TGI} = Hours when the incinerator CEM was exceeding 250 ppmvd SO₂ on a rolling twelve-hour average, corrected to 0% O₂, in each 24 hour period of the Incident

i = Each hourly average

$FR_{Inc.}$ = Incinerator Exhaust Gas Flow Rate (standard cubic feet per hour, dry basis) (actual stack monitor data or engineering estimate based on the acid gas feed rate to the SRP) for each hour of the Incident

$Conc. SO_2$ = The average SO₂ concentration (CEMS data) that is greater than 250 ppm in the incinerator exhaust gas, ppmvd corrected to 0% O₂, for each hour of the Incident

$\% O_2 = O_2 \text{ concentration (CEMS data) in the incinerator exhaust gas in volume \% on dry basis for each hour of the Incident}$

$$0.169 \times 10^{-6} = [\text{lb mole of SO}_2 / 379 \text{ scf SO}_2] [64 \text{ lbs SO}_2 / \text{lb mole SO}_2] [1 \times 10^{-6}]$$

Standard conditions = 60 degree F; 14.7 lb_{force}/sq.in. absolute

In the event the concentration SO₂ data point is inaccurate or not available or a flow meter for FR_{inc}, does not exist or is inoperable, then Delek shall estimate emissions based on best engineering judgment.

D. CONTROL OF HYDROCARBON FLARING INCIDENTS

28. For HC Flaring Incidents occurring on or after the Date of Entry, Delek shall follow the same investigative, reporting, and corrective action procedures as those set forth in Paragraphs 17 and 18 for AG Flaring Incidents; provided however, that in lieu of analyzing possible corrective actions under Paragraph 17.e and taking interim and/or long-term corrective action under Paragraph 18 for a HC Flaring Incident attributable to the Startup or Shutdown of a unit that Delek has previously analyzed under this Paragraph, Delek may identify such prior analysis when submitting the report required under this Paragraph. Delek shall submit the HC Flaring Incident(s) reports as part of the Semi-annual Progress Reports required pursuant to Section VI. Stipulated penalties under Paragraphs 19-26 and Section VIII shall not apply to HC Flaring Incident(s). The formulas at Paragraph 26, used for calculating the quantity and rate of sulfur dioxide emissions during AG Flaring Incidents, shall be used to calculate the quantity and rate of sulfur dioxide emissions during HC Flaring Incidents.

E. LEAK DETECTION AND REPAIR (“LDAR”) PROGRAM

29. In order to minimize or eliminate fugitive emissions of volatile organic compounds (“VOCs”), benzene, volatile hazardous air pollutants (“VHAPs”), and organic hazardous air pollutants (“HAPs”) from equipment in light liquid and/or in gas/vapor service, Delek shall

comply with the LDAR requirements of this Section V. E. The terms “equipment,” “in light liquid service,” and “in gas/vapor service” shall have the definitions set forth in the applicable provisions of 40 C.F.R. Part 60, Subpart GGG; Part 61, Subparts J and V; Part 63, Subparts F, H, and CC; and applicable Texas and local LDAR regulations.

30. **Affected Facilities.** Upon the Date of Entry, the group of all equipment within each process unit (as “equipment” and “process unit” are defined at 40 C.F.R. § 60.591) and each compressor shall become affected facilities under 40 C.F.R. Part 60, Subpart GGG, and shall become subject to and comply with the requirements of 40 C.F.R. Part 60, Subpart GGG, and the requirements of this Section V. E., unless any such equipment or any such compressors are subject to 40 C.F.R. Part 63, Subparts CC, F, or H, in which case that equipment and those compressors shall comply with Subparts CC, F, or H and not Subpart GGG.

31. **Written Refinery-Wide LDAR Program.** No later than one hundred eighty (180) Days after the Date of Entry of the Consent Decree, Delek shall develop, maintain, and implement a written program for equipment in light liquid and/or in gas/vapor service. Delek shall update the program as may be necessary to ensure continuing compliance. Such program shall include, at a minimum:

- a. A leak rate goal for the Tyler Refinery that will be a target for achievement on a process-unit-by-process-unit basis;
- b. An identification of all equipment in light liquid and/or in gas/vapor service that has the potential to leak VOCs, HAPs, VHAPs, and benzene within the Tyler Refinery’s process units;
- c. Procedures for identifying leaking equipment within the Tyler Refinery’s process units;
- d. Procedures for repairing and keeping track of leaking equipment;
- e. Procedures for identifying and including in the LDAR program new equipment;

- f. A process for evaluating new and replacement equipment to promote consideration and installation of equipment that will minimize leaks and/or eliminate chronic leakers;
- g. A definition or designation of “LDAR Personnel” responsible for the day-to-day implementation of the LDAR program and the designation of an “LDAR Coordinator” who has the authority and responsibility for implementing the enhanced LDAR program at the Tyler Refinery (by name or position); and
- h. A procedure for regularly communicating LDAR information to appropriate Delek personnel.

32. **Training**. No later than sixty (60) Days after the development of the Tyler Refinery-wide LDAR program listed in Paragraph 31, Delek shall begin to implement the following training programs at the Tyler Refinery:

- a. For personnel newly assigned to LDAR responsibilities, Delek shall require LDAR training prior to each employee beginning such work;
- b. For all personnel assigned LDAR responsibilities, Delek shall provide and require completion of annual LDAR training.
- c. For all other operations and maintenance personnel (including contract personnel) at the Tyler Refinery, Delek shall provide and require completion of an initial training program that includes instruction on aspects of LDAR that are relevant to the person’s duties. “Refresher” training shall be performed on a three-year cycle; and
- d. If contract employees are performing LDAR work, Delek shall assure that its contractor complies with the training requirements in Subparagraphs 34.a-c, as appropriate, for all such contractor employees and shall require the contractor to provide its training information and records to Delek.

33. **LDAR Audits**. Delek shall implement at the Tyler Refinery the refinery-wide LDAR audits set forth in this Paragraph to ensure the Tyler Refinery’s compliance with all applicable LDAR requirements. The LDAR audits shall include, but not be limited to, (1) comparative monitoring, (2) records review to ensure monitoring and repairs were completed in the required periods, (3) a field audit to ensure affected equipment has been identified and

included in the facility LDAR program, (4) tagging procedures, (5) data management procedures, and (6) observation of the LDAR technicians' calibration and monitoring techniques. During the LDAR audits, leak rates shall be calculated for each process unit where comparative monitoring was performed.

Within sixty (60) days of completion of each audit, Delek shall report to EPA any areas of non-compliance identified as a result of its refinery-wide audit, and submit in writing a proposed compliance schedule for correcting the non-compliance. If the proposed compliance schedule extends greater than ninety (90) days beyond the audit completion date, Delek must seek approval of the compliance schedule from EPA. Delek shall implement the compliance schedule as proposed until the schedule is approved or disapproved by EPA. Within ninety (90) days of completing each audit, Delek shall certify to EPA that the refinery:

- i. is in compliance, or;
- ii. has completed corrective action necessary to correct non-compliance identified during the audit; and/or
- iii. is on a compliance schedule; and
- iv. shall specifically certify that all affected equipment has been identified and included in the facility LDAR program.

a. Initial Third-Party LDAR Compliance Audit. By no later than sixty (60) days after the Date of Entry, Delek shall engage a third-party contractor to undertake a refinery-wide audit of Delek's compliance with the LDAR regulations, including, at a minimum, each of the audit requirements set forth in this Paragraph 33. Within two hundred and forty (240) days after Date of Entry, Delek shall complete the Initial Third-Party LDAR Compliance Audit.

b. Periodic Third-Party LDAR Audits. Delek shall retain a contractor with expertise in the LDAR Program's requirements to perform a Periodic Third-Party LDAR Audit of the LDAR

Program at least once every two (2) calendar years after the Initial Third-Party Compliance Audit is completed under Paragraph 33.a. (with approximately 24 months between the Audits).

34. **Implementation of Actions Necessary to Correct Non-Compliance.** If the results of any of the audits conducted pursuant to Paragraph 33 identify any areas of noncompliance, Delek shall implement, as soon as practicable, all steps necessary to correct or otherwise address such area(s) of non-compliance and to prevent a recurrence of the cause of that non-compliance, to the extent practicable.

a. Ratio. For purposes of this Paragraph, a ratio shall be established by comparing the (1) process unit valve leak percentage (i.e., the number of leaking components divided by the total number of monitored components) determined through a comparative monitoring audit conducted under Paragraph 33, to (2) the average valve leak percentage reported for the process unit for the four quarters immediately preceding the audit. If the ratio of the process unit valve leak percentage to the average valve leak percentage is in excess of 3.0, that shall be cause for corrective action and Delek shall be subject to stipulated penalties as provided in Paragraph 64. If the calculated ratio yields an infinite result, Delek shall assume one leaking valve was found by Delek in the four quarters immediately preceding the audit.

b. Audit Records. For the life of the Decree, Delek shall retain the audit reports generated pursuant to Paragraph 33 and shall maintain a written record of all corrective actions that Delek takes in response to deficiencies identified in any audits. In the first semi-annual report after the completion of an audit, see Section VI of this Decree (Recordkeeping and Reporting), Delek shall submit a summary, including findings, of each such audit report and a list of corrective actions taken during the reporting period. In each subsequent semi-annual report under Section VI of this Decree, Delek shall report the corrective actions taken during that

reporting period and a notice, where appropriate, that all corrective actions have been completed in response to a particular audit at the Tyler Refinery.

35. **Internal Leak Definition for Valves and Pumps.** On and after the Date of Entry, Delek shall utilize the following internal leak definitions for valves and pumps in light liquid and/or gas/vapor service, unless other permit(s), regulations, or laws require the use of lower leak definitions.

a. Leak Definition for Valves. Delek shall utilize an internal leak definition of 500 ppm VOCs for valves at the Tyler Refinery, excluding pressure relief devices.

b. Leak Definition for Pumps. Delek shall utilize an internal leak definition of 2000 ppm for the Tyler Refinery's pumps.

36. **Reporting, Recording, Tracking, Repairing, and Remonitoring Leaks of Valves and Pumps Based on the Internal Leak Definitions.**

a. Reporting. For regulatory reporting purposes, Delek may continue to report leak rates in valves and pumps against the applicable regulatory leak definition, or may use the lower, internal leak definitions specified in Paragraph 35.

b. Recording, Tracking, Repairing, and Remonitoring Leaks. Delek shall begin recording, tracking, repairing, and re-monitoring all leaks in excess of the internal leak definitions of Paragraph 35 at such time as those definitions become applicable. Delek shall make a first attempt to repair and re-monitor leaks within five (5) calendar Days of identification. Within thirty (30) Days of identification, Delek shall either complete repairs and re-monitoring of leaks or place such component on the Tyler Refinery's delay of repair list pursuant to Paragraph 43.

37. **LDAR Monitoring Frequency: Pumps.** Delek shall monitor all pumps at the Tyler Refinery at the internal leak definition set forth in Paragraph 35 on a monthly basis.

38. **LDAR Monitoring Frequency: Valves.** Delek shall monitor all valves at the Tyler Refinery, other than difficult-to-monitor or unsafe-to-monitor valves, at the internal leak definition set forth in Paragraph 35 on a quarterly basis.

39. **Initial Attempt at Repair of Valves.** By the Date of Entry, Delek shall promptly make an “initial attempt” to repair any valve at the Tyler Refinery that has a reading greater than 200 ppm of VOCs, excluding pressure relief devices, control valves, and components that LDAR personnel are not authorized to repair. Delek or its designated contractor shall remonitor the valve in question within five (5) calendar Days after the “initial attempt” to repair. If the re-monitored leak reading is below the applicable leak definition, no further action will be necessary. If the re-monitored leak reading is greater than the applicable leak definition, Delek shall repair the valve according to the requirements of Paragraph 43. If Delek can demonstrate with sufficient monitoring and repair data that this “initial attempt” at repair requirement at 200 ppm does not reduce emissions, Delek may, after two (2) years of implementing the “initial attempt” requirement, request that the EPA reconsider or amend this requirement.

40. **Electronic Monitoring, Storing, and Reporting of LDAR Data.**

a. **Electronic Storing and Reporting of LDAR Data.** Beginning on the Date of Entry, Delek shall continue to maintain an electronic database for storing and reporting LDAR data at the Tyler Refinery.

b. **Electronic Data Collection During LDAR Monitoring and Transfer Thereafter.** By the Date of Entry, Delek shall use data loggers and/or electronic data collection devices during all LDAR monitoring at the Tyler Refinery. Delek, or its designated contractor, shall use its best efforts to transfer on a daily basis the electronic data from electronic data logging devices to the electronic database maintained pursuant to Paragraph 40.a. For all monitoring events in which

an electronic data collection device is used, the collected monitoring data shall include a time and date stamp, and identification of the instrument and operator.

41. **QA/QC of LDAR Data.** By no later than the Date of Entry, Delek (or a third-party contractor retained by Delek) shall have developed and begun implementing procedures for quality assurance/quality control (“QA/QC”) reviews of all data generated by LDAR monitoring technicians such that: (a) monitoring data is reviewed for QA/QC by the monitoring technicians daily after collection; and (b) all monitoring data is subject to a QA/QC review at least once per quarter, including but not limited to the number of components monitored per technician, time between monitoring events, and abnormal data patterns.

42. **Calibration/Calibration Drift Assessment.**

a. **Calibration.** Delek or its LDAR contractor shall conduct all calibrations of LDAR monitoring equipment at the Tyler Refinery in accordance with 40 C.F.R. Part 60, EPA Reference Test Method 21.

b. **Calibration Drift Assessment.** Beginning no later than the Date of Entry, Delek shall conduct calibration drift assessments of LDAR monitoring equipment at the Tyler Refinery at the end of each monitoring shift, at a minimum. Delek shall conduct the calibration drift assessment using, at a minimum, a 500 ppm calibration gas. If any calibration drift assessment after the initial calibration shows a negative drift of more than 10% from the previous calibration, Delek shall re-monitor all valves that were monitored using that instrument and that had a reading greater than 200 ppm after its last calibration and shall re-monitor all pumps that were monitored using that instrument and that had a reading greater than 500 ppm after its last calibration.

c. Delek shall maintain records of all instrument calibrations for a period of 1 year following the date of calibration.

43. **Delay of Repair.**

a. Beginning no later than sixty (60) Days from the Date of Entry, Delek shall take the following actions:

- i. Require sign-off by the unit supervisor (as identified in the Tyler Refinery's written LDAR program), for any equipment at the Tyler Refinery that Delek intends to place on the "delay of repair" list under applicable regulations, within fifteen (15) Days of identifying that a piece of equipment is leaking at a rate greater than the applicable leak definition that such equipment is technically infeasible to repair without a process unit Shutdown.
- ii. Include equipment that is placed on the "delay of repair" list in Delek's regular LDAR monitoring.
- iii. Use the "drill and tap" method (or an equivalent) on a valve, other than on a control or pressure relief valve, if it is leaking at a rate of 10,000 ppm or greater after a first attempt at repair, unless Delek can demonstrate that there is a safety, mechanical, or major environmental concern posed by repairing the leak in this manner. Delek shall, if necessary, perform two "drill and taps" (or equivalents) within thirty (30) Days of detecting the leak. After two unsuccessful attempts to repair a leaking valve through the drill and tap method, Delek may place the leaking valve on its "delay of repair" list.

b. If a new, similarly effective, valve repair method not currently in use by the refining industry is planned to be used by Delek in lieu of the "drill and tap" method, Delek shall advise EPA prior to implementing such a method or, if prior notice is not practicable, as soon as practicable after implementation.

44. **Chronic Leakers.** Delek shall replace, repack, or perform similarly effective repairs on chronically leaking, non-control valves during the next process unit turnaround after identification. A valve shall be classified as a “chronic leaker” under this Paragraph if it leaks above 10,000 ppm twice in any consecutive four quarters, unless the valve has not leaked in the twelve (12) consecutive quarters prior to the relevant process unit turnaround.

45. **Recordkeeping and Reporting Requirements for this Section.**

a. Consistent with the requirements of Section VI (Recordkeeping and Reporting), Delek shall include the following information in the Tyler Refinery’s semi-annual progress report (Paragraph 48.a) in which the identified activity occurred or was required:

- i. Certification that training has been implemented as required by Paragraph 32;
- ii. Certification that the lower leak definitions and increased monitoring frequencies have been implemented according to Paragraphs 35, 37 and 38;
- iii. Certification that the “initial attempt at repair” program under Paragraph 39 has been implemented;
- iv. Certification that the QA/QC procedures for reviewing data generated by LDAR technicians under Paragraph 41 have been implemented;
- v. An identification of the Tyler Refinery’s LDAR Coordinator;
- vi. Certification that a tracking program for new valves and pumps added during maintenance and construction has been developed and is being implemented;
- vii. Certification that the calibration drift assessment procedures under Paragraph 42 have been implemented;
- viii. Certification that the “delay of repair” procedures under Paragraph 43 have been implemented; and
- ix. A copy of the Tyler Refinery’s written refinery-wide LDAR program under Paragraph 31.

b. In the Delek's progress report submitted pursuant to Paragraph 48.a, Delek shall also include the following information on LDAR monitoring:

- i. A list of the process units monitored during the reporting period;
- ii. The number of valves and pumps present in each process unit;
- iii. The number of valves and pumps monitored in each process unit;
- iv. A justification if the number of valves and pumps present in each process unit is greater than the number of valves and pumps monitored in each process unit;
- v. The number of valves and pumps found leaking, and the percentage of valves and pumps found leaking;
- vi. The number of "difficult to monitor" pieces of equipment monitored;
- vii. The projected month and year of the next monitoring event for that unit;
- viii. A list of all equipment currently on the "delay of repair" list, the date each component was determined to be leaking at a rate greater than 10,000 ppm, the date of each drill and tap or equivalent method of repair, its associated monitoring results, and whether such activities were completed in a timely manner under Paragraph 43;
- ix. The number, date and results of each initial attempt at repair, including a list of all initial attempts/remonitoring that did not occur in a timely manner under Paragraph 39; and
- x. All instances when Delek failed to comply with the requirements in Paragraph 36.b (Recording, Tracking, Repairing and Remonitoring Leaks).

**F. INCORPORATION OF CONSENT DECREE REQUIREMENTS INTO
FEDERALLY ENFORCEABLE PERMITS**

46. **Consent Decree Requirements.** By no later than one hundred twenty (120) Days after the Date of Entry, Delek shall submit applications to TCEQ's SIP-approved permitting program to incorporate the following Paragraphs required by the Consent Decree into federally enforceable non-Title V permits (e.g., major or minor NSR permits) that will ensure that the Paragraphs survive the termination of this Consent Decree:

- a. Paragraph 11: Flaring Devices NSPS Applicability
- b. Paragraph 14: Compliance Methods for Flaring Devices
- c. Paragraph 30: Affected Facilities
- d. Paragraph 35: Internal Leak Definition for Valves and Pumps
- e. Paragraphs 37 and 38: LDAR Monitoring Frequency
- f. Paragraph 40: Electronic Monitoring, Storing, and Reporting of LDAR Data
- g. Paragraph 42: Calibration/Calibration Drift Assessment
- h. Paragraph 43: Delay of Repair

Following submission of the permit application(s), Delek shall cooperate with the TCEQ by promptly submitting to the TCEQ all available information that the TCEQ seeks following its receipt of the permit application(s). Delek shall file any applications necessary to incorporate the requirements of those permits into the Title V permits of the Tyler Refinery.

47. **Mechanism for Title V Incorporation.** The Parties agree that the incorporation of any emission limits or other standards into the CAA Title V permits where required by this Consent Decree shall be in accordance with the applicable state CAA Title V rules.

VI. RECORDKEEPING AND REPORTING

48. Delek shall submit to EPA semi-annual progress reports due on August 31 (covering the prior period from January 1 to June 30) and February 28 (covering the prior period from July 1 to December 31), with the first such report due on February 28, 2010. The semi-annual progress reports will contain the following information:

a. General. Each report will contain:

- i. A progress report on the implementation of the requirements of Section V (Affirmative Relief at the Refinery);
- ii. A summary of the emissions data that is specifically required by the reporting requirements of Section V of this Consent Decree for the period covered by the report;
- iii. A description of any problems anticipated with respect to meeting the requirements of Section V of this Consent Decree; and
- iv. Any such additional matters as Delek believes should be brought to the attention of EPA.

b. Emissions Data. In each semi-annual report required to be submitted on August 31 of each year, Delek shall provide a summary of annual emissions data for the prior calendar year.

The summary shall include:

- i. Estimation (in tons per year) of SO₂ emissions from all Sulfur Recovery Plants; and
- ii. SO₂ emissions from all Acid Gas Flaring and Tail Gas Incidents by flare in tons per year.

c. Certification. Each report will be certified by a Delek employee responsible for environmental management at the Tyler Refinery:

I certify under penalty of law that this information was prepared under my direction or supervision by personnel qualified to properly gather and evaluate the information submitted. Based on my directions and after reasonable inquiry of 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.

VII. CIVIL PENALTY

49. Within thirty (30) Days of the Date of Entry, Tyler Holding shall pay a civil penalty of \$624,000 to the United States.

a. Payment of monies to the United States shall be made by Electronic Funds Transfer (“EFT”) to the United States Department of Justice, in accordance with current EFT procedures, referencing DOJ Case Number 90-5-2-1-08279, and the civil action case name and case number of this action in the Eastern District of Texas. The costs of such EFT shall be the responsibility of Tyler Holding. Payment shall be made in accordance with instructions provided to Tyler Holding by the Financial Litigation Unit of the U.S. Attorney’s Office for the Eastern District of Texas. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. Tyler Holding shall provide notice of payment, referencing DOJ Case Number 90-5-2-1-08279, and the civil action case name and case number to the Department of Justice and to EPA, as provided in Paragraph 116 (Notice).

b. Tyler Holding shall not deduct the civil penalty paid under this Section in calculating its federal, state, or local income tax.

50. Upon the Date of Entry, the Decree shall constitute an enforceable judgment for purposes of post-judgment collection of the civil penalty from Tyler Holding in accordance with Federal Rule of Civil Procedure 69, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable federal authority.

51. Stipulated Penalty for Late Civil Penalty Payment. For failure to make the civil penalty payment required by Paragraph 49 of this Consent Decree, Tyler Holding shall be liable for \$10,000 per day.

VIII. STIPULATED PENALTIES

52. Delek shall pay stipulated penalties to the United States for each failure by Delek to comply with the terms of this Consent Decree as provided herein. Stipulated penalties shall be calculated in the amounts specified in Paragraphs 53 through 80. For those provisions where a stipulated penalty of either a fixed amount or 1.2 times the economic benefit of delayed compliance is available, the decision of which alternative to seek shall rest exclusively within the discretion of the EPA.

A. Requirements for Flaring Devices.

53. For failure to comply with either NSPS Subpart A or Subpart J, including emission limits, for the Flaring Devices identified in Appendices A and B, per device:

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$500
Beyond 31 st day after deadline	\$1,500
Beyond 60 th day after deadline	\$2,000

This stipulated penalty shall not apply to Flaring Device #2 Cat Flare, the Boiler Flare, the Crude Flare, and the Alky Flare until December 31, 2009. If stipulated penalties could be assessed under both Paragraphs 53 and 54, the higher penalty shall apply.

B. Requirements for Control of AG Flaring and Tail Gas Incidents.

54. For AG Flaring Incidents and/or Tail Gas Incidents for which Delek is liable under Section V. B.:

Tons Emitted in Flaring Incident or Tail Gas Incident	Length of Time from Commencement of Flaring within the Flaring Incident to Termination of Flaring within the Flaring Incident is 3 hours or less; Length of Time of the Tail Gas Incident is 3 hours or less	Length of Time from Commencement of Flaring within the Flaring Incident to Termination of Flaring within the Flaring Incident is greater than 3 hours but less than or equal to 24 hours; Length of Time of the Tail Gas Incident is greater than 3 hours but less than or equal to 24 hours	Length of Time of Flaring within the Flaring Incident is greater than 24 hours; Length of Time of the Tail Gas Incident is greater than 24 hours
5 tons or less	\$500 per ton	\$750 per ton	\$1,000 per ton
Greater than 5 tons, but less than or equal to 15 tons	\$1,200 per ton	\$1,800 per ton	\$2,300 per ton, up to, but not exceeding, \$27,500 in any one calendar day

Greater than 15 tons	\$1,800 per ton, up to, but not exceeding, \$27,500 in any one calendar day	\$2,300 per ton, up to, but not exceeding, \$27,500 in any one calendar day	\$27,500 per calendar day for each calendar day over which the Flaring Incident lasts
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For purposes of calculating stipulated penalties pursuant to this Paragraph, only one cell within the matrix shall apply. Thus, for example, for a Flaring Incident in which the Flaring starts at 1:00 p.m. and ends at 3:00 p.m., and for which 14.5 tons of sulfur dioxide are emitted, the penalty would be \$17,400 (14.5 x \$1,200); the penalty would not be \$13,900 [(5 x \$500) + (9.5 x \$1200)]. For purposes of determining which column in the table set forth in this Paragraph applies under circumstances in which Flaring occurs intermittently during a Flaring Incident, the Flaring shall be deemed to commence at the time that the Flaring that triggers the initiation of a Flaring Incident commences, and shall be deemed to terminate at the time of the termination of the last episode of Flaring within the Flaring Incident. Thus, for example, for Flaring within a Flaring Incident that (i) starts at 1:00 p.m. on Day 1 and ends at 1:30 p.m. on Day 1; (ii) recommences at 4:00 p.m. on Day 1 and ends at 4:30 p.m. on Day 1; (iii) recommences at 1:00 a.m. on Day 2 and ends at 1:30 a.m. on Day 2; and (iv) for which no further Flaring occurs within the Flaring Incident, the Flaring within the Flaring Incident shall be deemed to last 12.5 hours -- not 1.5 hours -- and the column for Flaring of “greater than 3 hours but less than or equal to 24 hours” shall apply.

55. For failure to timely submit any report required by Section V. A. (including the PMO Plan required by Paragraph 12.b and the certification regarding compliance methods

required by Paragraph 14.b), or Section V. B. (Paragraph 17), or for submitting any report that does not substantially conform to its requirements:

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
Days 1-30	\$750
Days 31-60	\$1,500
Over 60 Days	\$3,000

56. For those corrective action(s) which Delek: (i) agrees to undertake following receipt of an objection by EPA pursuant to Paragraph 18; or (ii) is required to undertake following dispute resolution, then, from the date of EPA’s receipt of Delek’s report under Paragraph 17 of this Decree until the date that either: (i) a final agreement is reached between EPA and Delek regarding the corrective action; or (ii) a court order regarding the corrective action is entered, Delek shall be liable for stipulated penalties as follows:

a.	<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
	Days 1-120	\$50
	Days 121-180	\$100
	Days 181 - 365	\$300
	Over 365 Days	\$3,000

or

- b. 1.2 times the economic benefit resulting from Delek’s failure to implement the corrective action(s).

57. For failure to complete any corrective action under Paragraph 18 of this Decree in accordance with the schedule for such corrective action agreed to by Delek or imposed on Delek pursuant to the dispute resolution provisions of this Decree (with any such extensions thereto as to which EPA and Delek may agree in writing):

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
Days 1-30	\$1,000
Days 31-60	\$2,000
Over 60	\$5,000

C. Requirements for Control of Hydrocarbon Flaring Incidents.

58. For each failure to perform a Root Cause analysis or submit a written report or perform corrective actions for a HC Flaring Incident, as required by Paragraph 28:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day per Incident</u>
1st through 30th day	\$500
31st through 60th day	\$1,500
Beyond 60th day	\$3,000

D. Requirements for Leak Detection and Repair Program.

59. For failure to develop an LDAR Program as required by Paragraph 31: \$3,500 per week.

60. For failure to designate and/or maintain an individual as accountable for LDAR performance as required by Paragraph 31.g, or for failure to implement the maintenance tracking program required by Paragraph 31.d: \$3,500 per week.

61. For failure to implement the training programs specified in Paragraph 32: \$10,000 per month, per program.

62. For failure to conduct any of the audits described in Paragraph 33: \$5,000 per month, per audit.

63. For failure to implement any actions necessary to correct non-compliance as required in Paragraph 34:

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$1,250
31 st through 60 th day after deadline	\$3,000
Beyond 60 th day	\$5,000, or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater

64. For failure to prevent a ratio of leak rates in excess of 3.0, as specified in Paragraph

34.a.:

<u>Ratio</u>	<u>Penalty per audit</u>
Greater than 3.0 and less than or equal to 4.0	\$15,000 per process unit
Greater than 4.0 and less than or equal to 5.0	\$30,000 per process unit
Greater than 5.0 and less than or equal to 6.0	\$45,000 per process unit
Greater than 6.0	\$60,000 per process unit

Note: stipulated penalties will not be assessed if a ratio of leak rates in excess of 3.0 is discovered in the Initial Third-Party LDAR Compliance Audit described in Paragraph 33.a. Stipulated penalties listed in this Paragraph will be assessed (if applicable) in the Periodic Third-Party LDAR Audits described in Paragraph 33.b.

65. For failure to perform monitoring utilizing the lower internal leak rate definitions as specified in Paragraph 35: \$100 per component, but not greater than \$10,000 per month, per process unit.

66. For failure to make first repair attempts within 5 Days and/or take other actions required by Paragraph 36: \$500 per component but not greater than \$10,000 per month.

67. For failure to implement the “initial attempt” repair program set forth in Paragraph 39: \$100 per component, but not to exceed \$10,000 per month, per process unit.

68. For failure to implement the LDAR monitoring program as required by Paragraph 40: \$100 per component, but not greater than \$10,000 per month, per process unit.

69. For failure to use dataloggers and/or electronic data collection devices, and/or for failure to maintain electronic data as required by Paragraph 40: \$5,000 per month.

70. For failure to implement the QA/QC procedures described in Paragraph 41: \$1,000 per incident, but not greater than \$10,000 per month, per process unit.

71. For failure to conduct and record the calibrations and the calibration drift assessments or remonitor valves and pumps based on calibration drift assessments in Paragraph 42: \$100 per missed event.

72. For failure to comply with the requirements for delay of repair set forth at Paragraph 43: \$5,000 per valve or pump, per incident of non-compliance.

73. For failure to comply with the requirements for chronic leakers set forth at Paragraph 44: \$5,000 per valve.

74. For failure to submit the written deliverables required by Section V. E.: \$500 per week per deliverable.

75. For each valve or pump that Delek failed to include in its LDAR program within ninety (90) Days of the date of completion of the initial audit under Paragraph 33: \$175. If it is determined through a federal, state, or local investigation that Delek has failed to include all valves or pumps in its LDAR program, Delek shall pay \$350 per component that it failed to include.

E. Requirements to Incorporate Consent Decree Requirements into

Federally-Enforceable Permits.

76. For each failure to submit an application as required by Paragraphs 46 and 47:

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
Days 1-30	\$800
Days 31-60	\$1,500
Over 60 Days	\$3,000

F. Requirements for Reporting and Recordkeeping.

77. For failure to submit reports as required by Section VI, per report, per day:

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$300
31 st through 60 th day after deadline	\$1,000
Beyond 60 th day	\$2,000

G. Requirement to Pay Stipulated Penalties.

78. For failure to pay stipulated penalties as required by Paragraphs 52 and 79 of this Consent Decree, Delek shall be liable for \$2,500 per day, and interest on the amount overdue at the rate specified in 28 U.S.C. § 1961(a).

H. Payment of Stipulated Penalties.

79. Delek shall pay stipulated penalties upon written demand by the United States no later than sixty (60) Days after Delek receives such demand. Stipulated penalties shall be paid to the United States in the manner set forth in Section VII (Civil Penalty) of this Decree. A demand for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates, the stipulated penalty amount the United States is demanding for each violation (as can be best estimated), the calculation method underlying the demand, and the grounds upon which the demand is based. The United States may, in its unreviewable discretion, waive payment of any portion of stipulated penalties that may accrue under this Decree. Delek shall not deduct stipulated penalties paid under this Section in calculating its federal, state, or local income tax.

I. Disputed Stipulated Penalties.

80. Should Delek dispute the United States' demand for all or part of a stipulated penalty, it may avoid the imposition of a stipulated penalty for failure to pay a stipulated penalty

under Paragraph 78 by placing the disputed amount demanded in a commercial, interest-bearing, escrow account pending resolution of the matter and by invoking the dispute resolution provisions of Section XII within the time provided in Paragraph 79 for payment of stipulated penalties. If the dispute is thereafter resolved in Delek's favor, the escrowed amount plus accrued interest shall be returned to Delek; otherwise, the United States shall be entitled to the amount that was determined to be due by the Court, plus the interest that has accrued in the escrow account on such amount. The United States reserves the right to pursue any other non-monetary remedies to which it is legally entitled, including but not limited to, injunctive relief for Delek's violations of this Consent Decree.

IX. INTEREST

81. After the date on which payment of the Civil Penalty is due under this Decree, Tyler Holding shall be liable for interest on the unpaid balance of the civil penalty specified in Section VII. After the date on which payment of any stipulated penalty is due under this decree, Delek shall be liable for interest on any unpaid balance of stipulated penalties to be paid in accordance with Section VIII. All such interest shall accrue at the rate established pursuant to 28 U.S.C. § 1961(a) – i.e., a rate equal to the coupon issue yield equivalent (as determined by the Secretary of Treasury) of the average accepted auction price for the last auction of 52-week U.S. Treasury bills settled prior to the Date of Entry. Interest shall be computed daily and compounded annually. Interest shall be calculated from the date payment is due under the Decree through the date of actual payment. For purposes of this Paragraph, interest pursuant to this Paragraph will cease to accrue on the amount of any stipulated penalty payment made into an interest-bearing

escrow account as contemplated by Paragraph 80 of the Decree. Stipulated penalty monies timely paid into escrow shall not be considered to be an unpaid balance under this Section.

X. RIGHT OF ENTRY

82. Any authorized representative of EPA, including independent contractors, upon presentation of credentials, shall have a right of entry upon the premises of the Tyler Refinery, at any reasonable time for the purpose of monitoring compliance with the provisions of this Decree, including, without limitations, inspecting plant equipment and systems and inspecting and copying records that EPA deems relevant to verifying compliance with this Decree. Delek shall retain records required under this Decree for the period of the Decree. Nothing in this Decree shall limit the authority of EPA to conduct tests, inspections, or other activities under any statutory or regulatory provision.

XI. FORCE MAJEURE

83. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Decree, Delek shall notify the United States in writing as soon as practicable, but in any event within twenty (20) business Days of the date when Delek first knew of the event or should have known of the event by the exercise of due diligence. In this notice, Delek shall specifically reference this Paragraph of this Decree and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by Delek to prevent or minimize the delay and the schedule by which those measures shall be implemented. Delek shall take all reasonable steps to avoid or

minimize such delays. The notice required by this Section shall be effective upon dispatch by overnight delivery service that provides a record of the dispatch and delivery dates, or upon the mailing of the same by certified mail, return receipt requested, to the EPA Region 6 Office as specified in Paragraph 116 (Notice).

84. Failure by Delek to substantially comply with the notice requirements of Paragraph 83 as specified above shall render this Section voidable by the United States, as to the specific event for which Delek has failed to comply with such notice requirement, and, if voided, is of no effect as to the particular event involved.

85. The United States shall notify Delek in writing regarding its claim of a delay or impediment to performance within forty-five (45) Days of receipt of the force majeure notice provided under Paragraph 83.

86. If the United States agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Delek, including any entity controlled by Delek, and that Delek could not have prevented the delay by the exercise of due diligence, the Parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances or such other period as may be appropriate under the circumstances. Such stipulation shall be filed as a modification to the Decree pursuant to the modification procedures established in this Decree. Delek shall not be liable for stipulated penalties for the period of any such delay.

87. If the United States does not accept Delek's claim of a delay or impediment to performance, Delek must submit the matter to the Court for resolution to avoid payment of stipulated penalties, by filing a petition for determination with the Court no later than thirty (30)

Days after receipt of the United States' notice provided pursuant to Paragraph 85. Once Delek has submitted this matter to the Court, the United States shall have forty-five (45) Days to file its response to the petition. If the Court determines that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Delek, including any entity controlled by Delek, and that the delay could not have been prevented by Delek by the exercise of due diligence, Delek shall be excused as to that event(s) and delay (including stipulated penalties), for all requirements affected by the delay for a period of time equivalent to the delay caused by such circumstances or such other period as may be determined by the Court.

88. Delek shall bear the burden of proving that any delay of any requirement(s) of this Decree was caused by or will be caused by circumstances beyond its control, including any entity controlled by it, and that it could not have prevented the delay by the exercise of due diligence. Delek shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date or dates.

89. Unanticipated or increased costs or expenses associated with the performance of Delek's obligations under this Decree shall not constitute circumstances beyond its control, or serve as the basis for an extension of time under this Section.

90. Notwithstanding any other provision of this Decree, this Court shall not draw any inferences nor establish any presumptions adverse to either Party as a result of Delek serving a force majeure notice or the Parties' inability to reach agreement.

91. As part of the resolution of any matter submitted to this Court under this Section, the Parties by agreement, or the Court, by order, may extend or modify the schedule for

completion of work under the Decree to account for the delay in the work that occurred or will occur as a result of any delay or impediment to performance agreed to by the United States or approved by this Court. Delek shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

XII. RETENTION OF JURISDICTION/DISPUTE RESOLUTION

92. Until the Decree terminates in accordance with Section XV of this Decree (Termination), this Court shall retain jurisdiction over this matter for the purposes of implementing and enforcing the terms and conditions of the Decree and for the purpose of adjudicating all disputes (including, but not limited to, determinations under Section V [Affirmative Relief at the Refinery] of the Decree) between the Parties that may arise under the provisions of the Decree.

93. The dispute resolution procedure set forth in this Section shall be available to resolve all disputes arising under this Decree, except only as otherwise provided in Section XI regarding Force Majeure, provided that the Party making such application has made a good faith attempt to resolve the matter with the other Party.

94. Dispute resolution shall be commenced by one Party by giving written notice to the other Party advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice and the Parties shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) Days after the receipt of such notice.

95. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations shall not extend beyond thirty (30) Days from the date of the first meeting between representatives of the Parties, unless the Parties agree that this period should be extended.

96. In the event that the Parties are unable to reach agreement during such informal negotiation period, the United States shall provide Delek with a written summary of its position regarding the dispute. The position advanced by the United States shall be considered binding unless, within forty-five (45) Days of Delek's receipt of the written summary of the United States' position, Delek files with the Court a petition which describes the nature of the dispute. The United States shall respond to the petition within forty-five (45) Days of filing.

97. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set forth in this Section may be shortened upon motion of one of the Parties to the dispute.

98. The Parties do not intend that the invocation of this Section by a Party cause the Court to draw any inferences or establish any presumptions adverse to either Party as a result of invocation of this Section or their inability to reach agreement.

99. As part of the resolution of any dispute submitted to dispute resolution, the Parties, by agreement, or this Court, by order, may extend or modify the schedule for completion of work under this Decree to account for the delay in the work that occurred as a result of dispute resolution. Delek shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

XIII. EFFECT OF SETTLEMENT

100. **Definitions.** For purposes of Section XIII, the following definitions apply:

a. “Applicable NSPS Subparts A and J Requirements” shall mean the standards, monitoring, testing, reporting, and recordkeeping requirements, found at 40 C.F.R. §§ 60.100 through 60.109 (Subpart J), relating to a particular pollutant and a particular affected facility, and the corollary general requirements found at 40 C.F.R. §§ 60.1 through 60.19 (Subpart A) that are applicable to any affected facility covered by Subpart J.

b. “Post-Entry Compliance Dates” shall mean any dates in this Section after the Date of Entry. Post-Entry Compliance Dates include dates certain (e.g., “August 31, 2008”), dates after Entry represented in terms of “months after Entry” (e.g., “Twelve Months after the Date of Entry”), and dates after Entry represented by actions taken (e.g., “Date of Certification”). The Post-Entry Compliance Dates represent the dates by which work is required to be completed or an emission limit is required to be met under the applicable provisions of this Decree.

101. **Resolution of Liability Regarding Applicable NSPS Requirements.** With respect to SO₂ emissions from the #1 Boiler Flare, #2 Cat Flare, #3 Crude Flare, #4 Truck Loading Flare, #5 Alky Flare, and the Wastewater Flare, entry of this Consent Decree will resolve all civil liability of Tyler Holding and Delek to the United States for violations of the Applicable NSPS Subparts A and J Requirements from the date that the claims of the United States accrued up to the Date of Entry.

102. **Prior NSPS Applicability Determinations.** Nothing in this Decree shall affect the status of any FCCU, fuel gas combustion device, or sulfur recovery plant currently subject to NSPS as previously determined by any federal, state, or local authority or any applicable permit.

103. **Resolution of Liability Regarding LDAR Requirements.** With respect to the Leak Detection and Repair requirements relating to equipment in light liquid service and gas and/or vapor service set forth at 40 C.F.R. Part 60, Subparts VV and GGG; and 40 C.F.R. Part 63, Subpart CC (collectively “LDAR Requirements”), entry of this Consent Decree shall resolve the civil liability of Tyler Holding and Delek to the United States for violations that:

(1) commenced and ceased prior to the Date of Entry of the Consent Decree; and/or

(2) commenced prior to the Date of Entry and continued past that date, provided that the events giving rise to such violations are identified in the initial audit required under Paragraph 33.a and are corrected pursuant to the requirements of Paragraph 34.

104. **Reservation of Rights Regarding LDAR Requirements.** Notwithstanding the resolution of liability in Paragraph 103, nothing in this Decree precludes the United States from seeking from Delek civil penalties and/or injunctive relief and/or other equitable relief for violations by Delek of LDAR requirements that: (1) commenced prior to the Date of Entry of this Decree and continued after the Date of Entry if Delek fails to identify such violations in its Paragraph 33.a. audit, and/or fails to correct such violations pursuant to Paragraph 34; or (2) commenced after the Date of Entry of the Decree.

105. **Resolution of Liability Regarding Violations Specifically Alleged in the Complaint.** Entry of this Consent Decree shall resolve all civil liability of Tyler Holding and Delek to the United States for all violations alleged in the Complaint.

106. **Audit Policy.** Nothing in this Consent Decree is intended to limit or disqualify Delek, on the grounds that information was not discovered and supplied voluntarily, from seeking to apply EPA’s Audit Policy to any violations or non-compliance that Delek discovers

during the course of any investigation, audit, or enhanced monitoring that Delek is required to undertake pursuant to this Consent Decree.

107. **Claim/Issue Preclusion**. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, penalties, or other relief relating to Tyler Holding or Delek for violations of the NSPS and/or LDAR requirements not identified in this Section of the Consent Decree and/or the Complaint:

a. Tyler Holding and Delek shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting. Nor may Tyler Holding or Delek assert, or maintain, any other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case. Nothing in the preceding sentences is intended to affect the ability of Tyler Holding or Delek to assert that the claims are deemed resolved by virtue of this Section of the Consent Decree.

b. The United States may not assert or maintain that this Decree constitutes acceptance by Tyler Holding or Delek of any interpretation or guidance issued by EPA related to the matters addressed in this Decree.

108. **Imminent and Substantial Endangerment**. Nothing in this Decree shall be construed to limit the authority of the United States to undertake any action against any person, including Delek, to abate or correct conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

XIV. GENERAL PROVISIONS

109. **Other Laws.** Except as specifically provided by this Decree, nothing in this Decree shall relieve Delek of its obligations to comply with all applicable federal, state, and local laws and regulations. In addition, nothing in this Decree will be construed to prohibit or prevent the United States from developing, implementing, and enforcing more stringent standards subsequent to the Date of Entry of this Decree through rulemaking, the permit process, or as otherwise authorized or required under federal, state, or local laws and regulations. Subject to Section XIII, nothing contained in this Decree shall be construed to prevent or limit the rights of the United States to seek or obtain other remedies or sanctions available under other federal, state, or local statutes or regulations, by virtue of Delek's violation of the Decree or of the statutes and regulations upon which the Decree is based, or for Delek's violations of any applicable provision of law. This shall include the right of the United States to invoke the authority of the Court to order Delek's compliance with this Decree in a subsequent contempt proceeding. The requirements of this Decree do not exempt Delek from complying with any and all new or modified federal, state, and/or local statutory or regulatory requirements that may require technology, equipment, monitoring, or other upgrades after the Date of Lodging of this Decree.

110. **Post-Permit Violations.** Nothing in this Decree shall be construed to prevent or limit the right of the United States to seek injunctive or monetary relief for violations of permits issued as a result of the procedure required under Section V. F. of this Decree; provided however, that with respect to monetary relief, the United States must elect between filing a new action for

such monetary relief or seeking stipulated penalties under this Decree, if stipulated penalties also are available for the alleged violation(s).

111. **Failure of Compliance.** The United States does not, by its consent to the entry of this Decree, warrant or aver in any manner that Delek's complete compliance with the Decree will result in future compliance with the provisions of the CAA. Notwithstanding the review or approval by EPA of any plans, reports, policies, or procedures formulated pursuant to the Decree, Delek shall remain solely responsible for compliance with the terms of the Decree, all applicable permits, the CAA, and any other applicable federal, state, and local laws and regulations.

112. **Service of Process.** Tyler Holding and Delek hereby agree to accept service of process by mail with respect to all matters arising under or relating to the Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The persons identified by Tyler Holding and Delek at Paragraph 116 (Notice) are authorized to accept service of process with respect to all matters arising under or relating to the Decree.

113. **Costs.** Each Party to this action shall bear its own costs and attorneys' fees.

114. **Public Documents.** All information and documents submitted by Tyler Holding or Delek to EPA and/or the TCEQ pursuant to this Decree shall be subject to public inspection in accordance with the respective statutes and regulations that are applicable, unless subject to legal privileges or protection or unless identified and supported as business confidential in accordance with the respective state or federal statutes or regulations.

115. **Public Notice and Comment.** The Parties agree that the Decree may be entered upon compliance with the public notice procedures set forth at 28 C.F.R. § 50.7, and upon notice

to this Court from the United States Department of Justice requesting entry of the Decree. The United States reserves the right to withdraw or withhold its consent to the Decree if public comments disclose facts or considerations indicating that the Decree is inappropriate, improper, or inadequate.

116. **Notice.** Unless otherwise provided herein, notifications to or communications between the Parties shall be deemed submitted on the date they are postmarked if sent by U.S. Mail, postage prepaid, or on the date they are dispatched if sent by an overnight delivery service. Notifications and communications shall be sent by U.S. Mail, postage pre-paid, or private courier service, except for notices under Section XI (Force Majeure) and Section XII (Retention of Jurisdiction/Dispute Resolution) which shall be sent by an overnight delivery service that provides a record of the dispatch and delivery dates, or by certified mail, return receipt requested. Each report, study, notification, or other communication of Delek shall be submitted as specified in this Decree, with copies to EPA Headquarters and EPA Region 6. If the date on which a notification or other communication is due falls on a Saturday, Sunday, or legal holiday, the deadline for such submission shall be enlarged to the next business day. Except as otherwise provided herein, all reports, notifications, certifications, or other communications required under this Decree to be submitted or sent to the United States, EPA, Tyler Holding and/or Delek 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
Reference Case No. 90-5-2-1-08279

As to EPA:

U.S. Environmental Protection Agency
Director, Air Enforcement Division
Office of Civil Enforcement
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 2242-A
Washington, DC 20460

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

As to Tyler Holding:

Andrew Lapayowker
Tyler Holding Company, Inc.
P.O. Box 1168
Baltimore, MD 21203

Physical address:
One North Charles St.
Suite 2100
Baltimore, MD 21201

As to Delek:

Frederec Green
President and COO, Delek Refining Ltd.
7102 Commerce Way
Brentwood, TN 37027

and

Kent Thomas
General Counsel, Delek US Holdings, Inc.
7102 Commerce Way
Brentwood, TN 37027

Any Party may change either the notice recipient or the address for providing notices to it by serving all other parties with a notice setting forth such new notice recipient or address. In addition, the nature and frequency of reports required by the Consent Decree may be modified by mutual consent of the Parties. The consent of the United States to such modification must be in the form of a written notification of consent from the Department of Justice, but need not be filed with the Court to be effective.

117. **Approvals.** All EPA approvals shall be made in writing.

118. **Integration/Modification.** The Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. Prior drafts of the Decree shall not be used in any action involving the interpretation or enforcement of the Decree. Non-material modifications to this Decree, including modifications to the nature and frequency of reporting obligations, shall be in writing, signed by the Parties, but need not be filed with the Court. The United States will file non-material modifications with the court on a periodic basis. Material modifications to this Decree shall be in writing, signed by the Parties, and approved by the Court.

XV. TERMINATION

119. This Consent Decree shall remain in effect until terminated as follows:

- a. As to Tyler Holding, the Decree shall terminate automatically upon payment in full of the Civil Penalty and any Interest owed in accordance with Sections VII and IX of the Decree.
- b. As to Delek, this Decree is subject to termination upon motion by the United States or Delek (under the procedure set forth in Paragraph 120) anytime after Delek has completed:
 - i. the Initial Third-Party LDAR Compliance Audit as required by Paragraph 33.a, and complied with the certification and other requirements of Paragraph 33 i through iv; and
 - ii. two Periodic Third-Party LDAR Audits as required by Paragraph 33.b, and complied with the certification and other requirements of Paragraph 33 i through iv. The first Periodic Third-Party LDAR Audit required by this paragraph must be performed approximately 24 months after the Initial Third-Party LDAR Compliance Audit, and the second Periodic Third-Party LDAR Audit required by this paragraph must be performed approximately 48 months after the Initial Third-Party LDAR Compliance Audit.
- c. Prior to seeking termination, in addition to satisfying the above requirements, Delek shall have:

- i. paid all penalties and other monetary obligations due under the terms of the Consent Decree; no penalties or other monetary obligations due hereunder can be outstanding or owed to the United States; and
- ii. applied for and received permits incorporating the surviving Consent Decree requirements listed Section V. F;

120. At such time as Delek believes that it has satisfied the requirements for termination set forth in Paragraph 119, Delek shall certify such compliance and completion to the United States in writing as provided in Paragraph 116 (Notice). The certification shall contain the following statement, signed by a responsible corporate official of Delek:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Unless, within 120 Days of receipt of Delek's certification under this Paragraph, the United States objects in writing with specific reasons, Delek may move this Court for an order that this Decree be terminated. If the United States objects to the certification by Delek under this Paragraph, then the matter shall be submitted to the Court for resolution under Section XII (Retention of Jurisdiction/ Dispute Resolution) of this Decree. In such case, Delek shall bear the burden of proving that this Decree should be terminated.

XVI. SIGNATORIES

121. Each of the undersigned representatives certifies that he or she is fully authorized to enter into the Consent Decree on behalf of such Parties, and to execute and to bind such Parties to the Consent Decree. This Consent Decree may be signed in counterparts.

THE UNDERSIGNED PARTY enters into this Consent Decree in:
United States v. Tyler Holding Company, Inc., and Delek Refining, Ltd. (E.D. Tex.)

PLAINTIFF UNITED STATES OF AMERICA

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

John C. Cruden
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Bruce Gelber
Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

THE UNDERSIGNED PARTY enters into this Consent Decree in:
United States v. Tyler Holding Company, Inc., and Delek Refining, Ltd. (E.D. Tex.)

PLAINTIFF UNITED STATES OF AMERICA, continued

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

By: Joshua M. Olszewski
Trial Attorney by Special Appointment
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611
(214) 665-2178
(214) 665-2182 (fax)
Texas Bar No. 24013267

JOHN M. BALES
UNITED STATES ATTORNEY
EASTERN DISTRICT OF TEXAS

Thomas E. Gibson
Assistant United States Attorney
Senior Litigation Counsel
Texas Bar No. 07875450
110 N. College, Suite 700
Tyler, TX 75702
(903) 590-1400

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THE UNDERSIGNED PARTY enters into this Consent Decree in:
United States v. Tyler Holding Company, Inc., and Delek Refining, Ltd. (E.D. Tex.)

PLAINTIFF UNITED STATES OF AMERICA, continued

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

Lawrence Starfield
Acting Regional Administrator
United States Environmental Protection Agency
Region VI

THE UNDERSIGNED PARTY enters into this Consent Decree in:
United States v. Tyler Holding Company, Inc., and Delek Refining, Ltd. (E.D. Tex.)

DEFENDANT TYLER HOLDING COMPANY, INC.

By _____

THE UNDERSIGNED PARTY enters into this Consent Decree in:
United States v. Tyler Holding Company, Inc., and Delek Refining, Ltd. (E.D. Tex.)

DEFENDANT DELEK REFINING, LTD.

By _____

Appendix A: List of Acid Gas Flaring Devices

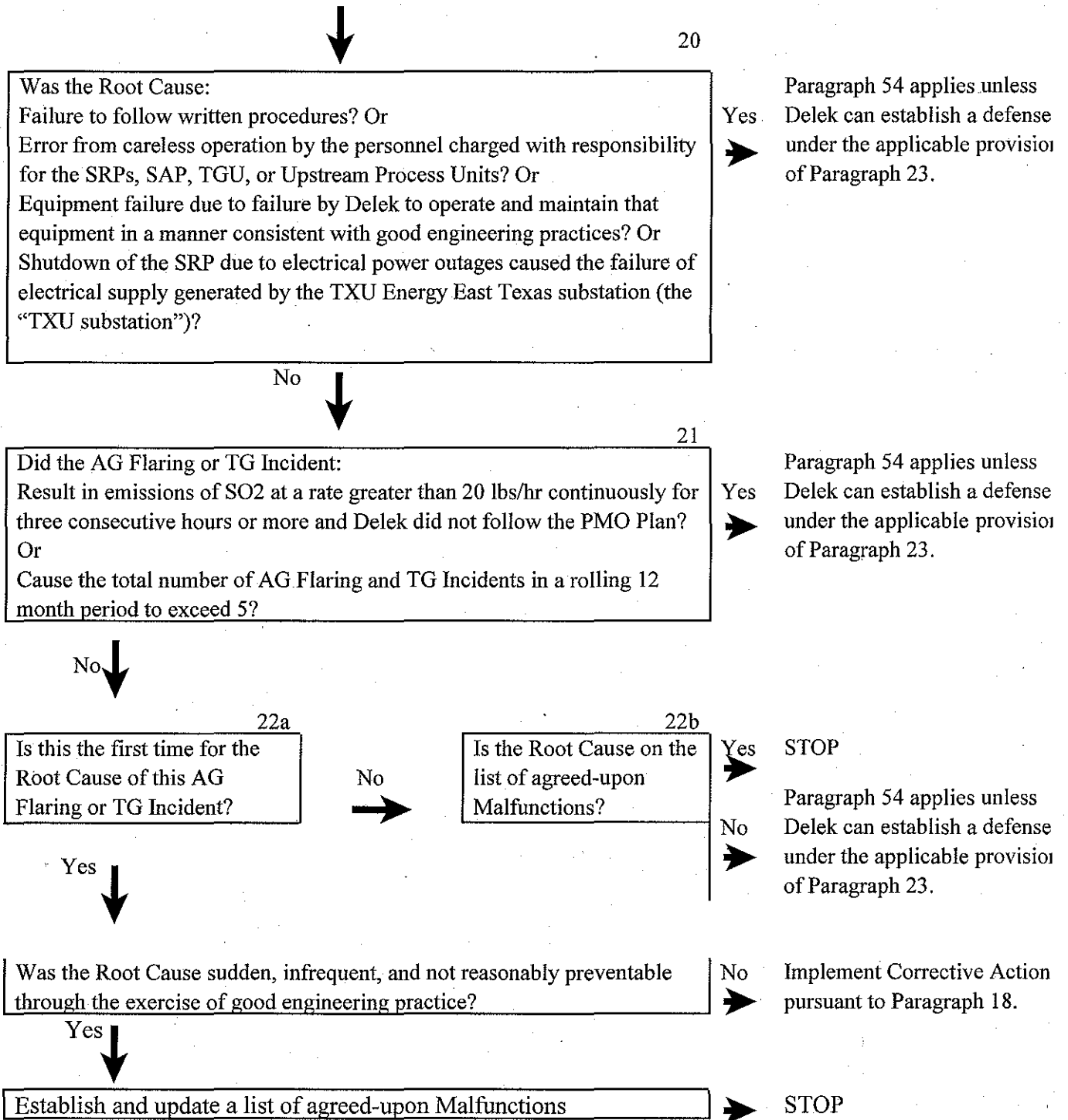
#2 Cat Flare

Appendix B: List of Hydrocarbon Flaring Devices

- #1 Boiler Flare
- #2 Cat Flare
- #3 Crude Flare
- #4 Truck Loading Flare
- #5 Alky Flare
- Wastewater Flare

Appendix C: Logic Diagram for Paragraphs 20 – 23

ALL ACID GAS (AG) FLARING/TAIL GAS (TG) INCIDENTS



APPROVED AND ORDERED