

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

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THE UNITED STATES OF AMERICA, )  
 )  
 and )  
 )  
 THE STATE OF COLORADO, )  
 )  
 Plaintiffs, )  
 v. )  
 )  
 WES DJ Gathering LLC )  
 f/k/a Kerr-McGee Gathering LLC, )  
 )  
 Defendant. )

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Civil Action No. 1:20-cv-01931-RMR-MEH

**CONSENT DECREE**

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WHEREAS, Plaintiffs United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Colorado (the “State”), on behalf of the Colorado Department of Public Health and Environment (“CDPHE”), have filed a complaint in this action alleging that Defendant, Kerr-McGee Gathering LLC (“Kerr-McGee”) violated Sections 111 and 112 of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7411 and 7412, and Sections 121 and 122 of the Colorado Air Pollution Prevention and Control Act (the “Colorado Act”), §§ 25-7-121 and 122, C.R.S.

WHEREAS, the Complaint alleges that Kerr-McGee, a limited liability company organized in Colorado, has violated leak detection and repair (“LDAR”) regulations at three natural gas processing plants it owns and operates near Fort Lupton, Colorado (“Fort Lupton Complex”) that include the Platte Valley, Lancaster, and Fort Lupton plants (“Covered Facilities”).

WHEREAS, on March 31, 2023, Kerr-McGee changed its name with the Colorado Secretary of State’s Office to WES DJ Gathering LLC (“WDJG”).

WHEREAS, the real property underlying the Platte Valley Plant is owned by an entity unrelated to WDJG (“Third Party”) and leased by WDJG.

WHEREAS, WDJG denies the violations and environmental consequences alleged in the Complaint (including all tables itemizing alleged violations), the Notice of Violation issued by the EPA to Kerr-McGee on February 27, 2019, the State Compliance Advisory No. 2019-160 (July 12, 2018) (Violations A and B), and the April 12, 2022 EPA Inspection Report.

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

interest.

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

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b). Venue lies in this District 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), because the violations alleged in the Complaint are alleged to have occurred, and WDJG conducts business, in this judicial district. WDJG consents to and shall not challenge entry of this Consent Decree or this Court’s jurisdiction to enter and enforce this Decree, and further consents to venue in this judicial district.

2. Solely for purposes of entering into this Consent Decree, WDJG agrees that the Complaint states claims upon which relief may be granted.

**II. APPLICABILITY**

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

4. During the term of this Consent Decree, in the event that WDJG proposes to sell or transfer ownership or operation, in whole or in part, of any of the Covered Facilities to a Third Party, WDJG shall notify the Third Party in writing of the existence of this Consent Decree prior to the closing of such sale or transfer and WDJG shall provide a copy of this Consent Decree to the Third Party. WDJG shall send a copy of the written notice provided to the Third Party

pursuant to this Paragraph to the EPA, the United States, the State, and CDPHE, in accordance with Section XV (Notices) at least 30 Days before the proposed closing.

5. No sale or transfer, whether in whole or in part, of ownership or operation of any of the Covered Facilities to a Third Party shall take place unless the Third Party demonstrates it has the financial and technical ability to comply and has agreed to enter a modification to this Consent Decree indicating the Third Party will become a party to this Consent Decree. In this event, WDJG will present to the United States and the State a joint unopposed motion to modify this Consent Decree that WDJG will file with the Court to make the terms and conditions of this Consent Decree applicable to the Third Party. It is the intent of the Parties that, upon approval of the Court, the modification shall release WDJG from the requirements of this Consent Decree and make the Third Party liable for all requirements and liabilities applicable to the transferred or purchased Covered Facility (or Covered Facilities), including stipulated penalties or other relief for noncompliance arising prior to the date of transfer, regardless of when that noncompliance was identified. WDJG may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Covered Facility.

6. This Consent Decree shall not be construed to impede the sale or transfer of any asset or interest between WDJG and any Third Party so long as the requirements of this Consent Decree are met.

7. Paragraphs 4–5 shall not be construed to affect or apply to mergers or other corporate transactions in which WDJG is acquired by a Third Party and the surviving entity, by operation of law, assumes all of WDJG’s assets and liabilities pursuant to the Consent Decree relating to the Covered Facilities.

8. Any attempt to transfer ownership or operation of the Covered Facilities to a Third Party without complying with Paragraphs 4–5 constitutes a violation of this Decree.

9. WDJG shall: (a) make a digital or paper copy of this Consent Decree, or relevant portions thereof, available to all officers and managers who will be responsible for implementation of the terms of this Consent Decree, and ensure that employees and contractors whose duties might reasonably include compliance with any provision of this Decree are made aware of any provision of this Consent Decree that falls within such person’s duties; and (b) place an electronic version of the Consent Decree on its intranet. WDJG shall be responsible for ensuring that all employees and contractors involved in performing any work pursuant to this Consent Decree perform such work in compliance with the requirements of this Consent Decree.

10. In any action to enforce this Consent Decree, WDJG shall not raise as a defense to liability the failure by any of its officers, directors, employees, agents, or contractors to comply with the provisions of this Consent Decree. This section does not preclude KMG from holding any employee, agent, or contractor, who is alleged to have not complied with this Consent Decree, liable for their actions.

### **III. DEFINITIONS**

11. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply. Terms used in this Consent Decree that are defined in the CAA or in federal and state regulations promulgated pursuant to the CAA shall have the meaning assigned to them in the CAA or such regulations, unless otherwise provided in this Decree. In the case of a conflict between federal and state definitions, federal definitions shall control. In the case of a conflict between federal and Consent Decree definitions, Consent Decree definitions shall control.

- a. “Affected Facility” shall have the meaning as defined in 40 C.F.R. § 60.5365a(b) through (h), regardless of the actual date of construction, modification, or reconstruction.
- b. “Annual” or “annually” shall mean a calendar year, except as otherwise provided in applicable LDAR regulations.
- c. “Business Day” shall mean Monday through Friday, except for Federal legal public holidays.
- d. “CAP” shall mean the Corrective Action Plan described in Paragraph 33 of this Consent Decree.
- e. “CDPHE” shall mean the Colorado Department of Public Health and Environment.
- f. “Clean Air Act” or “Act” or “CAA” shall mean the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q, and its implementing regulations.
- g. “Complaint” shall mean the Complaint filed by the United States and the State in this action.
- h. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto.
- i. “Control Valve” shall mean a device capable of automatically modulating flow in response to a signal from an external device to regulate a process variable.
- j. “Covered Equipment” shall mean the following equipment in all Covered Process Units:
  - (i) All valves, pumps, and connectors in VOC or wet gas service that are subject to standards under LDAR provisions effective as of February 3, 2023,

in 40 C.F.R. Part 60, Subparts OOOO, OOOOa (and by reference 40 C.F.R. Part 60, Subpart VVa), or under the State LDAR provisions effective as of February 3, 2023, applicable to natural gas processing plants at Colorado Air Quality Control Commission Regulation No. 7, Part D, Sections I.G.1. and II.I. (5 C.C.R. 1001-9).

(ii) All valves, pumps, and connectors in VHAP service that are subject to standards under LDAR provisions effective as of February 3, 2023, in 40 C.F.R. Part 63, Subpart HH (and by reference 40 C.F.R. Part 61, Subpart V), or under the State LDAR provisions effective as of February 3, 2023, applicable to natural gas processing plants at Colorado Air Quality Control Commission Regulation No. 7, Part D, Sections I.G.1. and II.I. (5 C.C.R. 1001-9).

k. “Covered Facilities” shall mean, collectively, the three natural gas processing plants owned and operated by WDJG near Fort Lupton, Colorado known as the Platte Valley, Lancaster, and Fort Lupton Plants.

l. “Covered Facility” shall mean any of the Platte Valley, Lancaster, and Fort Lupton Plants, as referred to singularly.

m. “Covered Process Unit” shall mean any Process Unit that includes Covered Equipment that is, or under the terms of this Consent Decree becomes, subject to the equipment Leak provisions of 40 C.F.R. Part 60, Subpart OOOOa (and by reference 40 C.F.R. Part 60, Subpart VVa).

n. “Date of Lodging” shall mean the date that the United States and the State file a “Notice of Lodging” of this Consent Decree with the Clerk of this Court for the purpose of providing notice and comment to the public.



o. “Day,” for purposes of requirements uniquely imposed by Section V.B (LDAR Program) under this Consent Decree, that are not also required by any applicable LDAR Regulations, shall mean a calendar day. In computing any period of time under this Consent Decree for submittal of reports or Approval of Deliverables (Paragraph 52), where the last Day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until 11:59 p.m. Mountain Time of the next Business Day.

p. “DOR” shall mean Delay of Repair.

q. “Effective Date” shall have the meaning given in Section XVI (Effective Date).

r. “Environmental Mitigation Projects” shall have the meaning given in Paragraph 40.

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

t. “Existing Connectors” shall mean connectors that are installed in a Covered Process Unit prior to the Effective Date.

u. “Existing Valves” shall mean valves that are installed in a Covered Process Unit prior to the Effective Date.

v. “Fin Fan Unit” shall mean an air-cooled heat exchanger equipped with threaded end-plugs in light liquid and/or gas/vapor service (as defined in 40 C.F.R. § 60.481a).

w. “Fin Fan Plug” shall mean a plug on a Fin Fan Unit. References to “connectors” in this Consent Decree exclude Fin Fan Plugs.

x. “Fort Lupton Plant” shall mean the natural gas processing plant owned and operated by WDJG at 16116 Weld County Road 22, Fort Lupton, Colorado, and which is a Covered Facility under this Consent Decree.

y. “In VHAP service” shall mean that a piece of equipment either contains or contacts a fluid (liquid or gas) that has a total volatile hazardous air pollutant (“VHAP”) concentration equal to or greater than 10 percent by weight as determined according to the provisions of 40 C.F.R. § 63.772(a).

z. “In VOC service” shall mean that a piece of equipment that contains or contacts a process fluid that is at least 10 percent VOC by weight, as determined according to the provisions of 40 C.F.R. § 60.485a(d).

aa. “In wet gas service” shall mean that a piece of equipment contains or contacts the field gas before the extraction step in the process.

bb. “WES DJ Gathering LLC” or “WDJG” shall mean Defendant WES DJ Gathering LLC f/k/a Kerr-McGee Gathering LLC.

cc. “Lancaster Plant” shall mean the natural gas processing plant owned and operated by WDJG at 16270 Weld County Road 22, Fort Lupton, Colorado, and which is a Covered Facility under this Consent Decree.

dd. “LDAR” or “Leak Detection and Repair” shall mean the Leak detection and repair activities required by any applicable equipment Leak regulations set forth in 40 C.F.R. Part 60, Subparts KKK, OOOO, OOOOa (and by reference 40 C.F.R. Part 60, Subpart VVa), and 40 C.F.R. Part 63, Subpart HH (and by reference 40 C.F.R. Part 61, Subpart V). LDAR shall also mean any applicable equipment Leak regulations of the State that require (1) the use of

Method 21 to monitor for equipment Leaks and (2) the repair of Leaks discovered through such monitoring.

ee. “LDAR Audit Commencement Date” or “Commencement of an LDAR Audit” shall mean the first Day of the on-site inspection that accompanies an LDAR Audit pursuant to Paragraph 32.

ff. “LDAR Audit Completion Date” or “Completion of an LDAR Audit” shall mean 120 Days after the LDAR Audit Commencement Date pursuant to Paragraph 32.

gg. “LDAR Auditor” shall mean the person or entity selected pursuant to Paragraph 32.b and responsible for conducting any LDAR Audit and preparing any LDAR Audit Report required under Paragraph 32 (LDAR Audits).

hh. “LDAR Database” shall mean an electronic database used to record data generated for compliance with LDAR Regulations and that is capable of exporting data in a reasonably usable format.

ii. “LDAR Personnel” shall mean all of WDJG’s contractors and employees who perform any of the following activities at the Covered Facilities: LDAR monitoring; LDAR data input; maintenance of LDAR monitoring devices; Leak repairs on equipment subject to LDAR Regulations; and/or any other field duties generated by LDAR Regulations or the LDAR Program. LDAR Personnel does not include the LDAR Auditor.

jj. “LDAR Program” shall mean the Leak Detection and Repair Program specified in Section V.B of this Consent Decree, which includes:

- (i) Requirements to achieve and ensure compliance with the LDAR requirements for natural gas processing plants at 40 C.F.R. Part 60, Subparts OOOO and OOOOa (and by reference 40 C.F.R. Part 60, Subpart VVa), 40

C.F.R. Part 63, Subpart HH (and by reference 40 C.F.R. Part 61, Subpart V), as well as any applicable equipment Leak requirements of the State effective as of February 3, 2023, applicable to natural gas processing plants and codified at Colorado Air Quality Control Commission Regulation No. 7, Part D, Sections I.G.1., and II.I (5 C.C.R. 1001-9); and

(ii) Measures required by the terms of this Consent Decree to mitigate environmental harm caused by alleged noncompliance at the Covered Facilities (including the valve replacement and improvement program in Paragraph 27, and the connector replacement and improvement program in Paragraph 28);

kk. “LDAR Regulations” shall collectively mean the regulations, and requirements referenced in Paragraph 11.jj(i), as well as any permits incorporating such requirements.

ll. “Leak” or “Leaking” shall mean:

(i) A Screening Value of Covered Equipment at or above the leak definition in the applicable LDAR Regulations, and as set forth in Table 1 (in Paragraph 24) of this Consent Decree;

(ii) Any emissions detected through olfactory, visual, or auditory sensing (“AVO”); or

(iii) Any emissions imaged by an OGI instrument, which meets the specifications of 40 C.F.R. § 60.5397a(c)(7)(i), during a monitoring event required by this Consent Decree.

mm. “Low-Emissions Packing” or “Low-E Packing” shall mean a valve packing product that meets one of the specifications set forth in subparagraphs (i) to (ii) below.

“Low-E Injectable Packing” is a type of Low-E Packing product (also meeting one of the specifications in subparagraphs (i) to (ii) below).

(i) A valve packing product, independent of any specific valve, for which the manufacturer has issued a written warranty that the packing is designed not to emit fugitive emissions detectable at a Screening Value of greater than 100 parts per million (ppm), and that, if fugitive emissions are detectable at a Screening Value of greater than 100 ppm at any time in the first five years after installation, the manufacturer will replace the product (subject to the manufacturer’s conditions); provided, however, that no packing product shall qualify as “Low-E” by reason of written warranty unless the packing first was tested by the manufacturer or a qualified testing firm pursuant to generally-accepted good engineering practices for testing fugitive emissions; or

(ii) A valve packing product, independent of any specific valve, that has been tested or certified by the manufacturer or a qualified Third Party testing firm pursuant to generally-accepted good engineering practices for testing fugitive emissions, and that, during the test, at no time leaked at greater than 100 ppm.

nn. “Low-Emissions Valve” or “Low-E Valve” shall mean any of the following:

(i) A valve utilizing “Low-Emissions Packing” or “Low-E Packing” as defined above;

(ii) A valve (including its specific packing assembly or stem sealing component) for which, the manufacturer has issued a written warranty that it is designed not to emit fugitive emissions detectable at a Screening Value of greater

than 100 ppm, and that, if fugitive emissions are detectable at a Screening Value of greater than 100 ppm at any time in the first five years after installation, the manufacturer will replace the valve (subject to the manufacturer's conditions); provided, however, that no valve shall qualify as "Low-E" by reason of written warranty unless the valve (including its specific packing assembly) either: (a) first was tested by the manufacturer or a qualified testing firm pursuant to generally-accepted good engineering practices for testing fugitive emissions; or (b) is an "extension" of another valve that qualified as "Low-E" under this subparagraph 11.nn(ii); or

(iii) A valve make and model (including its specific packing assembly) that: (a) has been tested or certified by the manufacturer or a qualified Third Party testing firm pursuant to generally-accepted good engineering practices for testing fugitive emissions and that, during the test, at no time leaked at greater than 100 ppm; or (b) is an "extension" of another valve that qualified as "Low-E" under this subparagraph 11.nn(iii).

For purposes of Paragraph 11.nn, being an "extension of another valve" means that the characteristics of the valve that affect sealing performance (e.g., type of valve, stem motion, tolerances, surface finishes, loading arrangement, and stem and body seal material, design, and construction) are the same or essentially equivalent as between the tested and the untested valve.

oo. "Method 21" shall mean the test method found at 40 C.F.R. Part 60, Appendix A-7, Method 21. To the extent that the Covered Equipment is subject to regulations that modify Method 21 during the term of this Decree, those modifications shall apply.

pp. “Monthly” shall mean a calendar month (e.g., January 1 through January 31), except as otherwise provided in applicable LDAR Regulations.

qq. “New Valve” shall mean any valve that is subject to the LDAR Program or LDAR Regulations and is installed at a Covered Facility after the Effective Date, including a valve replacing an Existing Valve, a newly added valve to a Covered Process Unit, or an Existing Valve that is repacked.

rr. “Optical Gas Imaging” or “OGI” shall mean monitoring using an instrument that images a gas cloud, not visible to the naked eye, and can absorb/emit radiant energy at the waveband of the infrared camera. The waveband must contain at least the range of 3.3 to 3.4 micrometers.

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

tt. “Parties” shall mean the United States, the State, and WDJG.

uu. “Platte Valley Plant” shall mean the natural gas processing plant owned and operated by WDJG at 16157 Weld County Road 22, Fort Lupton, Colorado, and which is a Covered Facility under this Consent Decree.

vv. “Pressure Relief Device” shall mean a device in gas/vapor service that is used to prevent operating pressures from exceeding the designed working pressure of the process equipment, except that any pressure relief device that is routed back to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage through the Pressure Relief Device to a control device as described in 40 C.F.R. § 60.482-10a, is not considered a Pressure Relief Device under this Decree. Pressure Relief Devices include

pressure relief valves. A Pressure Relief Device is not considered a “valve” as that term is used in this Consent Decree.

ww. “Process Unit” shall mean “components assembled for the extraction of natural gas liquids from field gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products. A Process Unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the products.” 40 C.F.R. § 60.5430a.

xx. “Process Unit Shutdown” means a work practice or operational procedure that stops production from a Covered Process Unit or part of a Covered Process Unit during which it is technically feasible to clear process material from a Covered Process Unit or part of a Covered Process Unit consistent with safety constraints and during which repairs can be accomplished. The following are not considered Process Unit Shutdowns: (a) an unscheduled work practice or operational procedure that stops production from a Covered Process Unit or part of a Covered Process Unit for less than 24 hours; (b) an unscheduled work practice or operational procedure that would stop production from a Covered Process Unit or part of a Covered Process Unit for a shorter period of time than would be required to clear the Covered Process Unit or part of the Covered Process Unit of materials and start up the unit, and would result in greater emissions than delay of repair of the Leaking component(s) until the next scheduled Process Unit Shutdown; and (c) the use of spare equipment and technically feasible bypassing of equipment without stopping production.

yy. “Quarter” or “quarterly” shall mean a calendar quarter (January through March, April through June, July through September, October through December), except as otherwise provided in applicable LDAR Regulations.



zz. “Repair Verification Monitoring” shall mean monitoring following a repair attempt in order to determine whether the Screening Value is below the applicable Leak definition in the LDAR Regulations or LDAR Program or that the Leak has been eliminated.

aaa. “Screening Value” shall mean the highest emission level that is recorded at Covered Equipment as it is monitored for the relevant monitoring event in accordance with Method 21.

bbb. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

ccc. “State” shall mean the State of Colorado, acting on behalf of CDPHE.

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

eee. “VHAP” shall mean volatile hazardous air pollutant as defined in 40 C.F.R. § 61.241.

fff. “Volatile Organic Compounds” or “VOCs” shall mean volatile organic compounds as defined in 40 C.F.R. §§ 60.2, 60.481 and 60.481a.

ggg. “Week” or “weekly” shall mean the standard calendar period, except as otherwise provided in applicable LDAR Regulations.

#### **IV. CIVIL PENALTY**

12. No later than 30 Days after the Effective Date, WDJG shall pay to the United States and the State, pursuant to Section 113 of the Act, 42 U.S.C. § 7413, and Section 122 of the Colorado Act, § 25-7-122, C.R.S., the sum of \$3,500,000 as a civil penalty, together with any interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

13. **Federal Payment Instructions.** WDJG shall pay the portion of the civil penalty due the United States, \$1,750,000, by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to WDJG by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Colorado after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which WDJG shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Candace Uduebor  
Counsel – HSE  
1099 18th Street, Suite 1800  
Denver, Colorado 80202  
(832) 636-1009 (Office)

on behalf of WDJG. WDJG may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XV (Notices).

14. At the time of payment, WDJG shall send notice that payment has been made: (i) to EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to the United States via email or regular mail in accordance with Section XV, and (iii) to EPA in accordance with Section XV. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States and the State of Colorado v. WES DJ Gathering LLC f/k/a Kerr-McGee Gathering LLC*, and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-11710.

15. **State Payment Instructions.** WDJG agrees to pay \$1,750,000 in civil penalties to the State, by certified, corporate or cashier's check drawn to the order of "Colorado Department of Public Health and Environment" and delivered to the attention of Enforcement Unit Supervisor, Air Pollution Control Division, 4300 Cherry Creek Drive South, APCD-SS-B1, Denver, Colorado 80246-1530. At the time of payment, WDJG shall send notice that payment has been made to the State in accordance with Section XV. Such notice shall state that the payment is for the civil penalty in *United States and the State of Colorado v. WES DJ Gathering LLC f/k/a Kerr-McGee Gathering LLC*, and shall reference the civil action number.

16. WDJG shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating its federal, state, or local income tax.

## V. COMPLIANCE REQUIREMENTS

### A. NSPS APPLICABILITY

17. **NSPS OOOOa Applicability.** Beginning no later than 90 Days after the Effective Date, WDJG shall accept applicability of and comply with 40 C.F.R. Part 60, Subpart OOOOa, at all Affected Facilities.

### B. LDAR PROGRAM

18. **LDAR Program Applicability.** The requirements of this LDAR Program shall apply to all Covered Equipment and all Covered Process Units at the Covered Facilities, as set forth in Section V.B. The requirements of this LDAR Program are in addition to, and not in lieu of, the requirements of any other LDAR Regulation that may apply to Covered Equipment.

19. Information pertaining to any non-Covered Equipment that remains in the LDAR Database will not be included in LDAR compliance calculations (e.g., the percentage of Leaking valves).

20. **Summary.** As more fully described in this Section, the LDAR Program requires WDJG to:

<b>Requirement</b>	<b>Paragraph</b>
Develop an LDAR Document for each Covered Facility	21 (Facility-Wide LDAR Document)
Conduct LDAR monitoring of Covered Equipment using Method 21 and a data logger (or equivalent instrument)	22 (Method 21 Data Logging)
Monitor Covered Equipment at the frequency specified in Paragraph 23.a	23 (Monitoring Frequency)
Repair Leaking Covered Equipment	24 (Action Levels), 25 (Repairs)
Follow the Consent Decree’s requirements for any Covered Equipment placed on DOR	26 (Delay of Repair)
Implement a Valve Replacement and Improvement Program	27 (Valve Replacement and Improvement Program)
Implement a Connector Replacement and Improvement Program	28 (Connector Replacement and Improvement Program)
Comply with Management of Change requirements	29 (Management of Change)
Implement training protocols	30 (Training)
Implement a quality assurance/quality control program	31 (Quality Assurance/Quality Control)
Conduct three LDAR audits of the Covered Facilities	32 (LDAR Audits), 33 (Corrective Action), and 34 (Certification of Compliance)

21. **Facility-Wide LDAR Document.** WDJG submitted a facility-wide document (“LDAR Document”) for the Covered Facilities. On April 4, 2023, the EPA and CDPHE approved WDJG’s LDAR Document. The LDAR Document describes:

- a. Applicability of the LDAR Program and LDAR Regulations to Process Units and Covered Equipment or other specific equipment. Applicability of requirements to specific equipment can be maintained in an external database;
- b. Applicable Leak definitions;
- c. Applicable monitoring frequencies;
- d. A tracking program (e.g., Management of Change (“MOC”) Protocol as provided in Paragraph 29) that ensures that new components or equipment added to the Covered Facility during the term of this Consent Decree are integrated into the LDAR Program, as applicable, and that components or equipment taken out of service during the term of this Consent Decree are removed;
- e. The roles and responsibilities of all LDAR Personnel at the Covered Facility and a summary of the training each will receive under Paragraph 30 (Training);
- f. An analysis demonstrating that the number of personnel dedicated to LDAR functions is sufficient to satisfy the requirements of the LDAR Program; and
- g. Any other elements necessary to implement the LDAR Program at the Covered Facility.

WDJG shall review the LDAR Document annually and update it, as applicable, by no later than December 31 of each year. WDJG shall submit the LDAR Document to EPA and CDPHE by March 1 of each year.

22. **Method 21 Data Logging.**

a. WDJG shall comply with Method 21 in performing LDAR monitoring, using an instrument connected to a data logger (or an equivalent instrument) that electronically records the Screening Value at each piece of Covered Equipment, the date and time of the Screening Value, and the identification numbers of the monitoring instrument and the technician. WDJG, or its agent, shall transfer this data to an LDAR Database within 7 Days of the monitoring event.

b. If, during LDAR monitoring in the field, a piece of Covered Equipment is discovered that is not listed in the data logger, WDJG is permitted to monitor the piece of Covered Equipment and record, by any means available, the Screening Value, including the date and time of the Screening Value, the identification numbers of the monitoring instrument and technician, and the identification number of the Covered Equipment monitored if available. In such an instance, the failure to initially record the information electronically in the data logger is not a violation of this Paragraph's requirement to record the required information electronically, provided that WDJG promptly adds the Covered Equipment and the information regarding the monitoring event into the LDAR Database within 7 Days.

23. **Monitoring Frequency.**

a. **Covered Equipment.** Beginning on the Effective Date, for the following Covered Equipment, WDJG shall comply with the following periodic monitoring frequencies, unless more frequent monitoring is required by the LDAR Regulations:

- (i) Pumps: monthly;
- (ii) Valves: quarterly; and
- (iii) Connectors: annually

b. **Pressure Relief Devices.** In addition to the requirements at 40 C.F.R. § 60.482-4a, no later than 90 Days after the Effective Date, WDJG shall conduct Method 21 monitoring of all Pressure Relief Devices that are designated as no detectable emissions at the Covered Facilities, under 40 C.F.R. § 60.482-4a. Method 21 monitoring of Pressure Relief Devices shall be conducted annually after the first monitoring.

c. Compliance with the monitoring frequencies in Paragraph 23.a is not required when a specific, applicable LDAR Regulation excludes or exempts, fully or partially, monitoring at a periodic frequency (e.g., an exemption for equipment that is designated as unsafe-to-monitor or difficult-to-monitor, an exemption for pumps that have no externally actuated shaft, or an exemption for connectors that are inaccessible to monitor) provided that WDJG satisfies all applicable conditions and requirements for the exclusion or exemption as set forth in the applicable LDAR Regulation.

d. The monitoring frequencies in Paragraph 23 shall apply and WDJG shall not use the skip/alternative monitoring provisions at 40 C.F.R. §§ 60.483-1a, 60.483-2a, and 60.482-11a(b)(3)(ii) or (iii).

24. **Action Levels.** Beginning on the Effective Date for all Leaks from Covered Equipment, WDJG shall perform repairs, replacements, or repacking in accordance with Paragraphs 25–27.

<b>TABLE 1</b>	
<b><u>Equipment Type</u></b>	<b><u>Screening Value (ppm)</u></b>
Valves	500
Connectors	500
Pumps	2,000

a. WDJG may elect to adjust the monitoring instrument readings for background pursuant to applicable LDAR Regulations.

b. Beginning no later than 90 Days after the Effective Date, for all Covered Equipment, and all valves and pumps in heavy liquid service, at any time, including outside of periodic monitoring, evidence of a potential Leak is detected through olfactory, visual, or auditory sensing, WDJG shall comply with all applicable regulations and, if repair is required, with Paragraphs 25 and 26.

25. **Repairs.** By no later than 5 Days after detecting a Leak, WDJG shall perform a first attempt at repair. By no later than 15 Days after detection, WDJG shall repair the Covered Equipment or it may place the Covered Equipment on DOR provided that WDJG has complied with all applicable LDAR Regulations and with the requirements of Paragraph 26 (Delay of Repair), Paragraph 27 (Valve Replacement and Improvement Program), and Paragraph 28 (Connector Replacement and Improvement Program), as applicable.

a. **Repair Verification Monitoring.** Beginning on the Effective Date of this Consent Decree and continuing until termination, WDJG shall perform Repair Verification Monitoring by the end of the next Business Day after each attempt at repair of the Covered Equipment performed pursuant to this Paragraph. No Covered Equipment will be considered repaired until Repair Verification Monitoring demonstrates there is no Leak. Repair Verification Monitoring shall confirm a Leak is repaired if:

- (i) For a Leak detected using Method 21, the Screening Value is below the applicable Leak definition in the LDAR Program; or



(ii) For a Leak detected using an OGI instrument, no emissions are imaged by OGI or the Screening Value is below the applicable Leak definition in the LDAR Program.

(iii) For a leak detected through AVO, the visual, audible, or olfactory indication of a leak has been eliminated and the Screening Value is below the applicable Leak definition in the LDAR Program.

b. **Proactive Repair Attempt for Valves.** Beginning on the Effective Date, WDJG shall make an initial attempt to repair and reduce the emissions from any valve (except Control Valves) that has a Screening Value greater than or equal to 250 ppm and less than 500 ppm, measured after the Effective Date, no later than 5 Days after detecting the emissions at such valve. Repair Verification Monitoring in accordance with Paragraph 25.a shall be performed. If the Screening Value during the Repair Verification Monitoring is less than 500 ppm, no further repairs under this Paragraph 25 (Repairs) shall be required for that monitoring event for that valve. If, however, the Screening Value during the Repair Verification Monitoring is greater than or equal to 500 ppm, WDJG shall comply with the requirements in this Paragraph 25 (Repairs), Paragraph 26 (Delay of Repair), and Paragraph 27 (Valve Replacement and Improvement Program), as applicable, (and all deadlines for such requirements shall be based on the date of the failed Repair Verification Monitoring).

c. Nothing in this Paragraph 25 (Repairs) is intended to prevent WDJG from taking Leaking Covered Equipment out of service; provided, however, that prior to placing the Covered Equipment back in service, WDJG must repair the Leak (according to Paragraph 25 (Repairs)) or must comply with the requirements of Paragraph 26 (Delay of Repair) to place the Covered Equipment on DOR. For repairs made to equipment taken out of service, WDJG shall

perform Repair Verification Monitoring no later than 5 Business Days of equipment being placed back into service.

26. **Delay of Repair.** Beginning no later than the Effective Date, for all Covered Equipment placed on DOR, WDJG shall:

a. Require sign-off from the relevant supervisor of the Covered Facility or person of similar authority that the Covered Equipment is technically infeasible to repair without a Process Unit Shutdown, and maintain records of such supervisor sign-off in accordance with Section V.D;

b. Monitor the Covered Equipment placed on the DOR list at the frequency specified in Paragraph 23 (Monitoring Frequency) (except where more frequent monitoring is required under 40 C.F.R. § 60.482-7a(c)(2) for valves, then WDJG shall monitor valves pursuant to 40 C.F.R. § 60.482-7a) and either:

(i) Repair the Covered Equipment within the time frame required by the applicable LDAR Regulations, except as provided in Paragraph 26.d; or

(ii) If Paragraph 27 (Valve Replacement and Improvement Program) or Paragraph 28 (Connector Replacement and Improvement Program) applies, replace, repack, or improve the Covered Equipment according to the timeframes set forth in Paragraphs 27–28.

c. WDJG shall not have more than 2.5% of the total number of Pressure Relief Devices (rounded up to a complete Pressure Relief Device) at each Covered Facility on the DOR list at any one time.

d. WDJG shall not allow Covered Equipment or Pressure Relief Devices in VOC or wet gas service to remain on DOR beyond the next Process Unit Shutdown and in no

event for longer than 18 months after a Leak is detected, unless WDJG demonstrates compliance with 40 C.F.R. § 60.482-9a(c)(1)–(2) and applicable requirements in Colorado Air Quality Control Commission Regulation Number 7, Part D, Section II.I.1.a, 5 Code Colo. Reg. § 1001-9, Part D:II.I.1.a.

e. The provisions of Paragraphs 26.c and 26.d apply to valves, pumps, connectors, and Pressure Relief Devices that are subject to work practice standards (i.e., first attempt at repair within 5 Days and repair within 15 Days). The provisions of Paragraphs 26.c and 27.d do not apply to equipment subject to no detectable emission standards (e.g., pressure relief devices in VOC or wet gas service that are required to be returned to a level of no detectable emissions within 5 Days of a pressure release).

**27. Valve Replacement and Improvement Program.**

**a. Commercial Unavailability of a Low-E Valve or Low-E Packing.**

WDJG shall comply with this Paragraph 27, except that WDJG is not required to utilize a Low-E Valve or Low-E Packing to replace or repack a valve if a Low-E Valve or Low-E Packing is not commercially available. The factors relevant to the question of commercial unavailability and the procedures that WDJG must follow to assert that a Low-E Valve or Low-E Packing is not commercially available are set forth in Appendix A.

b. **List of Existing Valves in Covered Process Units.** In the initial compliance status report required by Paragraph 45, WDJG shall include a list in spreadsheet format, organized by Covered Process Unit, of the tag numbers of all Existing Valves subject to LDAR Regulations.

c. **Proactive Initial Valve Tightening Work Practices for Each Newly-Installed or Repacked Valve.** Beginning no later than 90 Days after the Effective Date, WDJG

shall undertake the work practices specified in this Paragraph with respect to each New Valve that is subject to LDAR Regulations that is installed (whether the New Valve replaces an Existing Valve or is newly added to a Covered Process Unit) and each Existing Valve that is repacked. Upon installation (or re-installation in the case of repacking) and prior to the New Valve's exposure (or re-exposure, in the case of repacking) to process fluids, WDJG shall tighten the New Valve's packing gland nuts or their equivalent (e.g., pushers) to:

- (i) The manufacturer's recommended gland nut or packing torque; or
- (ii) Any alternative appropriate tightness, determined in WDJG's reasonable judgment, that will minimize the potential for fugitive emissions.

d. **Installing New Valves.** Beginning no later than 90 Days after the Effective Date, and except as provided in Paragraphs 27.d(i)–(iii), any New Valve (other than a New Valve that serves as the closure device on an open-ended line) that is installed in each Covered Process Unit and that, when installed, will be subject to applicable LDAR Regulations, will be either a Low-E Valve or be fitted with Low-E Packing. This requirement applies to entirely New Valves that are added to a Covered Process Unit and to Existing Valves that are replaced in a Covered Process Unit.

- (i) Paragraph 27.d shall not apply in emergencies or exigent circumstances requiring immediate installation or replacement of a New Valve where a Low-E Valve or Low-E Packing is not commercially available on a timely basis. Any such instances shall be reported in the next status report due under Paragraph 45.

(ii) Paragraph 27.d shall not apply to New Valves that are installed temporarily for a short-term purpose and then removed (e.g., New Valves connecting a portion of the Covered Process Unit to a testing device).

(iii) Paragraph 27.d does not require WDJG to utilize any valve or packing, including a Low-E Valve or Low-E Packing, that is not suitable for its intended use in a Covered Process Unit.

e. **Required Replacement or Repacking of Leaking Existing Valves with Low-E Valves or Low-E Packing.**

(i) Beginning 90 Days after the Effective Date, for each Existing Valve that has a Screening Value at or above 500 ppm twice in any three-year period, WDJG shall either replace the Existing Valve with a Low-E Valve or repack the Existing Valve with Low-E Packing. Furthermore, in determining the applicability of this Paragraph, WDJG need not consider Repair Verification Monitoring conducted in accordance with Paragraph 25.a or monitoring conducted while the valve is on DOR. The three-year period re-commences following replacement or repacking of the Existing Valve.

(ii) **Timing.** WDJG shall replace or repack an Existing Valve pursuant to Paragraph 27.e(i) by no later than 30 Days after the monitoring event that triggered the replacing or repacking requirement, unless WDJG complies with either Paragraph 27.e.(ii)(A) or Paragraph 27.h:

(A) **Permissible Delay Despite Diligent Efforts.** Where replacement or repacking does not require a Process Unit Shutdown, delayed replacement or repacking beyond the 30 Days is permissible only

when WDJG meets the following criteria in Subparagraphs (1)–(3), or when the circumstances in Subparagraph (4) apply:

(1) Prior to the 30-Day deadline, WDJG must take actions necessary to obtain the required Low-E Valve or Low-E Packing, including all anticipated necessary associated materials, as expeditiously as practicable, and retain documentation of the actions taken and the date of each such action. WDJG shall make the documentation available upon request by the EPA or CDPHE;

(2) If, despite WDJG’s efforts to comply with Paragraph 27.e(ii), the required valve or valve packing, including all anticipated necessary associated materials, is not available in time to complete the installation within 30 Days, WDJG must comply with Paragraph 27.e(iii) and take all reasonable actions to minimize emissions from the valve pending completion of the required replacing or repacking. Examples may include, as determined in WDJG’s sole discretion, 1) more frequent monitoring, with additional repairs as needed; or 2) where practical, interim replacing or repacking of a valve with a valve that is not a Low-E Valve or with packing that is not Low-E Packing; and

(3) WDJG must promptly perform the required replacing or repacking after WDJG’s receipt of the Low-E Valve or Low-E Packing, including all necessary associated materials; or

(4) In circumstances when emissions of purged materials resulting from the replacement or repacking of the Existing Valve are greater than the fugitive emissions likely to result from delaying the replacement or repacking procedure until the next planned Process Unit Shutdown, completion of the replacement or repacking procedure may be delayed until the end of the next Process Unit Shutdown.

(iii) **Applicable Requirements Pending Replacement or Repacking.**

For each Leaking Existing Valve subject to Paragraph 27.e that WDJG cannot repair through replacement or repacking within 15 Days, WDJG shall comply with all applicable LDAR Regulations and the LDAR Program, including Paragraphs 25 (Repairs) and 26 (Delay of Repair) pending replacing or repacking pursuant to Paragraph 27.e.

f. **Required Replacement or Repacking of Existing Valves Placed on Delay of Repair.**

(i) **Existing Valves on Delay of Repair Prior to the Effective Date.**

For each Existing Valve that WDJG placed on Delay of Repair between September 1, 2017, and August 31, 2022, because of a Screening Value greater than or equal to 10,000 ppm, WDJG shall either replace the Existing Valve with a Low-E Valve or repack the Existing Valve with Low-E Packing within 18 months of the Effective Date. The requirement in this Paragraph 27.f(i) shall not apply to valves that were successfully repaired by being fully replaced, or to valves that

are Low-E or have Low-E Packing. The valves subject to this Paragraph 27.f(i) are listed in Appendix B.

(ii) **Existing Valves on Delay of Repair as of the Effective Date.**

For each Existing Valve that is on Delay of Repair on the Effective Date, WDJG shall either replace the Existing Valve with a Low-E Valve or repack the Existing Valve with Low-E Packing at the next Process Unit Shutdown, except as provided in Paragraph 27.h, and in no case later than 12 months after the Effective Date.

(iii) **Valves Placed on Delay of Repair After the Effective Date.**

For each valve (including an Existing Valve or New Valve) that is placed on Delay of Repair after the Effective Date, WDJG shall either replace the valve with a Low-E Valve or repack the valve with Low-E Packing during the next Process Unit Shutdown, and in no case later than 18 months after the Existing Valve is placed on Delay of Repair.

g. **Replacing or Repacking Low-E Valves.** WDJG shall replace or repack a Low-E Valve or a valve using Low-E Packing in accordance with the procedures and requirements for replacing or repacking Leaking Existing Valves under Paragraph 27.e when the Low-E Valve or valve with Low-E Packing has a Screening Value at or above 500 ppm twice in any three-year period (excluding Repair Verification Monitoring conducted in accordance with Paragraph 25.a. or monitoring conducted while the valve is on DOR). The three-year period recommences following replacement or repacking of the Low-E Valve.

h. **Delay Related to Required Process Unit Shutdown.** If replacing or repacking a valve (including an Existing Valve or New Valve) requires a Process Unit Shutdown, WDJG shall replace or repack the valve during the first Process Unit Shutdown that



follows the event that triggered the requirement to replace or repack the valve under Paragraphs 27.e, 27.f(ii), or 27.f(iii), unless WDJG:

(i) Documents that insufficient time existed between the monitoring event and the Process Unit Shutdown to enable WDJG to purchase and install the required Low-E Valve or Low-E Valve packing technology. WDJG shall make the documentation available upon request by the EPA or CDPHE; and

(ii) Replaces or repacks the valve at the next Process Unit Shutdown that occurs after WDJG's receipt of the Low-E Valve or Low-E Valve packing, including all necessary associated materials.

i. **Low-E Status Not Affected by Subsequent Leaks.** If, during monitoring or after installation, a Low-E Valve or a valve using Low-E Packing Leaks, the Leak in and of itself is not a violation of this Consent Decree, does not invalidate the "Low-E" status or use of that type of valve or packing technology, and does not require replacing other, non-Leaking valves or packing technology of the same type.

j. **Repairing Low-E Valves.** If, during monitoring after installation, a Low-E Valve or a valve using Low-E Packing Leaks, Paragraphs 25–27 shall apply.

k. **Records of Low-E Valves and Low-E Packing.** Prior to installing any Low-E Valve or Low-E Packing, or if not possible before installation, then as soon as practicable after installation, WDJG shall secure from each manufacturer documentation that demonstrates that the proposed valve or packing technology meets either the definition of "Low-E Valve" or "Low-E Packing," as defined in this Consent Decree. WDJG shall make the documentation available upon request by the EPA or CDPHE.

1. Nothing in this Paragraph 27 requires WDJG to use any valve or valve packing technology that is not appropriate for its intended use.

28. **Connector Replacement and Improvement Program.**

a. **List of Existing Connectors in Covered Process Units.** In the initial compliance status report required by Paragraph 45, WDJG shall include a list in spreadsheet format, organized by Covered Process Unit, of the tag numbers and types, using Table 2 below, of all connectors defined as Covered Equipment and subject to LDAR Regulations (“Existing Connectors”).

b. Beginning no later than 90 Days after the Effective Date, except for connectors that are inaccessible to monitor as that term is used in 40 C.F.R. § 60.482-11a(f), for each connector that has a Screening Value at or above 500 ppm in any two of three consecutive monitoring events, WDJG shall replace or improve the connector in accordance with the applicable replacement or improvement described in Paragraph 28.c. In determining the applicability of this Paragraph, WDJG need not consider Repair Verification Monitoring conducted in accordance with Paragraph 25.a or monitoring conducted while the connector is on DOR. The period re-commences following replacement or improvement of the connector. WDJG shall use best efforts to install a replacement or improvement that, using good engineering judgment, will be the least likely to result in the occurrence of a subsequent Leak considering the service, operating conditions, and type of piping or tubing to which the connector is connected.

c. In complying with this Paragraph, WDJG shall replace or improve Existing Connectors in accordance with Table 2:

<b>TABLE 2</b>	
<b><u>Connector Type</u></b>	<b><u>Replacement or Improvement Description</u></b>
Flanged	Replacement or improvement of the gasket, or replacement of the connector with a like-kind connector or other
Threaded	Replacement or improvement of the thread sealing material or replacement of the connector with a like-kind connector or other
Compression	Replacement or improvement of compression fitting or replacement of the connector with a like-kind connector or other
CamLock	Replacement or improvement of the gasket or replacement or improvement of the CamLock with a like-kind connector or other
Quick Connect	Replacement or improvement of the gasket, if applicable, or replacement of the connector (with either a like-kind connector or other), if there is no gasket
Tubing Connectors and Connectors Equal to or Less than 1 inch in size	Improvement of the connector, or replacement of the connector with a like-kind connector or other
Any Type	Elimination (e.g., through welding, pipe, etc.)

For purposes of this Paragraph and Table 2, “gasket” means a sealing element that includes, but is not limited to, an O-ring, gasket, or D-ring.

d. **Like-Kind Replacement Requirements.** Where WDJG employs a like-kind replacement as the method for replacing or improving an Existing Connector (e.g., a Quick Connect replaces another Quick Connect), WDJG shall comply with the following requirements:

- (i) If there are types, models or styles of a like-kind connector that are less likely to Leak than the Existing Connector, and one or more of those types, models or styles are technically feasible to use (considering the service, operating

conditions, and type of piping or tubing that the connector is connected to), and would not create a safety, major mechanical, major product quality, regulatory or other issue, WDJG shall select a like-kind connector from among such types, models or styles.

(ii) If Paragraph 28.d(i) does not apply, WDJG may install a like-kind connector that is the same type, model or style as the Existing Connector.

e. **Timing.**

(i) If the replacement or improvement does not require a Process Unit Shutdown, WDJG shall undertake the replacement or improvement within 30 Days after the monitoring event that triggers the replacement or improvement requirement. In circumstances when emissions of purged materials resulting from the replacement or improvement are greater than the fugitive emissions likely to result from delaying the replacement or improvement procedure until the next planned Process Unit Shutdown, completion of the replacement or improvement procedure may be delayed until the end of the next Process Unit Shutdown.

(ii) If the replacement or improvement requires a Process Unit Shutdown, WDJG shall undertake the replacement or improvement during the first Process Unit Shutdown that follows the monitoring event that triggers the requirement to replace or improve the connector, unless WDJG documents that insufficient time existed between the monitoring event and the Process Unit Shutdown to enable WDJG to secure and install the replacement or improvement. In that case, WDJG shall undertake the replacement or improvement at the next Process Unit Shutdown that follows thereafter. In no circumstances may the

improvement or replacement procedure be completed more than one year from the monitoring event that triggers the improvement or replacement requirement.

f. Nothing in this Paragraph 28 requires WDJG to utilize any connector that is not appropriate for its intended use in a Covered Process Unit, or to eliminate any Existing Connector listed in Table 2.

29. **Management of Change.** WDJG shall implement a “Management of Change Protocol” at each of the Covered Facilities that ensures:

- a. Each valve, pump, and connector added to a Covered Facility for any reason is evaluated to determine if it is subject to the LDAR Program;
- b. If any Covered Equipment is physically removed from a Covered Process Unit, the equipment shall no longer be subject to the LDAR Program;
- c. Information, including monitoring relating to any Covered Equipment that is removed from any Covered Process Unit, is maintained in accordance with the applicable LDAR Regulations and this Consent Decree.

30. **Training.**

- a. **Training Protocol.** By no later than 90 Days after the Effective Date, and continuing until the Consent Decree’s termination, WDJG shall develop, for each Covered Facility, a training protocol for all LDAR Personnel (or as applicable, require its contractor(s) to develop a training protocol for the contractor’s employees).
- b. **Initial Training.** By no later than 180 Days after the Effective Date, WDJG shall ensure that all LDAR Personnel have completed training, including the LDAR Program, that are relevant to the person’s duties.

c. **Refresher Training.** Once each calendar year beginning in the calendar year after completion of initial training, WDJG shall ensure that all LDAR Personnel complete refresher training; provided, however, that refresher training is not required if an individual's employment at a Covered Facility ceases prior to the end of the calendar year or the individual's job duties no longer include implementing the LDAR Program or LDAR Regulations.

d. **New LDAR Personnel Training.** WDJG shall ensure that new LDAR Personnel are sufficiently trained on all aspects of LDAR that are relevant to the person's duties no more than 90 Days prior to implementing any aspect of the LDAR Program or LDAR Regulations (other than supervised involvement for purposes of training).

31. **Quality Assurance/Quality Control.**

a. **Daily Certification by Monitoring Technicians.** Beginning no later than 30 Days after the Effective Date, at the end of each Day that monitoring occurs, WDJG shall ensure that each monitoring technician certifies that the data collected accurately represents the monitoring performed for that Day by requiring the monitoring technician to sign a form that includes the following certification:

On [insert date], I reviewed the monitoring data that I collected today and to the best of my knowledge and belief, the data accurately represents the monitoring that I performed today.

b. **QA/QC Review.** Beginning no later than 120 Days after the Effective Date, at times that are not announced to the LDAR monitoring technicians, an LDAR-trained employee or contractor of WDJG, who does not serve on a routine basis as an LDAR monitoring technician at the Covered Facility, shall undertake the following no less than once per calendar Quarter at each Covered Facility:

- (i) Verify that Covered Equipment was monitored at the appropriate frequency;
- (ii) Verify that proper documentation and sign-offs have been recorded for all Covered Equipment placed on DOR;
- (iii) Verify that repairs have been performed in the required periods;
- (iv) Review monitoring data and Covered Equipment counts (e.g., number of pieces of Covered Equipment monitored per Day) for feasibility and unusual trends;
- (v) Verify that proper calibration records and monitoring instrument maintenance information are maintained;
- (vi) Verify that LDAR records are maintained as required; and
- (vii) Observe in the field each LDAR monitoring technician who is conducting Leak detection monitoring to ensure that monitoring during the quarterly QA/QC is being conducted as required.

c. WDJG shall promptly correct any deficiencies detected or observed through the QA/QC Review in Paragraph 31.b.

**32. LDAR Audits.**

a. **Audit Schedule.** WDJG shall complete three LDAR Audits of the Covered Facilities. WDJG shall ensure that each LDAR Audit is conducted in accordance with the following schedule:

- (i) For the first LDAR Audit, the LDAR Audit Commencement Date shall be no later than 270 Days after the Effective Date;

(ii) For the second LDAR Audit, the LDAR Audit Commencement Date shall be no sooner than 270 Days after the Certification of Compliance is submitted under Paragraph 34.a (“Audit Certification Date”) for the first LDAR Audit;

(iii) For the third LDAR Audit, the LDAR Audit Commencement Date shall be no sooner than 270 Days after the Audit Certification Date for the second LDAR Audit; and

(iv) Each LDAR Audit shall be completed by the LDAR Audit Completion Date.

b. **LDAR Auditor Selection Requirements.** For the LDAR Audits required under this Consent Decree, WDJG shall retain an LDAR Auditor. WDJG may not select LDAR Personnel at any Covered Facility to be the LDAR Auditor. WDJG may not hire the Third Party auditor as the Covered Facility’s LDAR Personnel during the life of this Consent Decree. The Third Party LDAR Auditor must be unaffiliated with WDJG, its subsidiaries, and related entities; there can be no common ownership between WDJG and the Third Party LDAR Auditor.

c. **Audit Scope & Content.** For each Covered Process Unit, the LDAR Auditor in each LDAR Audit shall:

(i) Review compliance with all applicable LDAR Regulations, including:

(1) A determination of the LDAR requirements applicable to Covered Equipment;

(2) A review of LDAR requirements related to valves, pumps, and connectors in heavy liquid service;



- (ii) Review or verify the same items required to be reviewed or verified in Paragraphs 31.b;
- (iii) Verify that all Covered Equipment is included in the LDAR Program;
- (iv) Perform “Comparative Monitoring” as described in Paragraph 32.d; and
- (v) In each subsequent Audit after the first Audit at each Covered Facility, review the Covered Facility’s compliance with the LDAR Program.

d. **Comparative Monitoring.** Comparative monitoring during LDAR Audits shall be undertaken as follows:

- (i) **Type of Monitoring.** Comparative monitoring shall employ Method 21 at each Covered Facility.
- (ii) **Calculating a Comparative Monitoring Audit Leak Percentage.** Covered Equipment shall be monitored in order to calculate a Leak percentage for each Covered Process Unit. For descriptive purposes under this Paragraph, the monitoring that takes place during an LDAR Audit shall be called “Comparative Monitoring” and the Leak percentages derived from the Comparative Monitoring shall be called the “Comparative Monitoring Audit Leak Percentages.” WDJG shall undertake comparative monitoring of the Covered Equipment in each Covered Process Unit during each LDAR Audit. In undertaking Comparative Monitoring, WDJG shall not be required to monitor every component in each Covered Process Unit.

(iii) **Calculating the Historic, Average Leak Percentage from Prior Periodic Monitoring Events.** WDJG shall average the Leak percentages from the following monitoring periods immediately preceding the comparative monitoring to calculate the “Historic, Average Leak Percentage” for each type of Covered Equipment. The preceding monitoring periods for valves, pumps, and connectors shall be according to the frequencies specified in Paragraph 23. The Historic, Average Leak Percentage shall be broken down by each Process Unit and Covered Type of Equipment.

- (1) Pumps – twelve (12) monthly monitoring periods;
- (2) Valves – four (4) quarterly monitoring periods;
- (3) Connectors – four (4) annual monitoring periods. WDJG

shall use the four (4) most recent annual monitoring periods that are available at the time of comparative monitoring.

(iv) **Calculating the Comparative Monitoring Leak Ratio.** For each Covered Process Unit, the ratio of the Comparative Monitoring Audit Leak Percentage from Paragraph 32.d(ii) to the Historic, Average Leak percentage from Paragraph 32.d(iii) shall be calculated. This ratio shall be called the “Comparative Monitoring Leak Ratio.” If the denominator in this calculation is “zero,” it shall be assumed (for purposes of this calculation but not for any other purpose under this Consent Decree or under any applicable laws and regulations) that one Leaking piece of Covered Equipment was found in a Covered Process Unit through routine monitoring during the monitoring periods referenced in Paragraph 32.d(iii) before the Comparative Monitoring.

e. **LDAR Audit Report.** By no later than the LDAR Audit Completion Date, the LDAR Auditor shall prepare and submit to WDJG a written report (“LDAR Audit Report”).

f. **LDAR Audit Report Contents.** The LDAR Audit Report must include the following:

(i) A summary of findings with respect to the topics specified in Paragraph 32.c(i) through (c)(iii) and 32.c(v);

(ii) The raw data in spreadsheet format with respect to the comparative monitoring described in Paragraph 32.d;

(iii) The Comparative Monitoring Audit Leak Percentage for each Covered Process Unit calculated pursuant to Paragraph 32.d(ii); and

(iv) The Comparative Monitoring Leak Ratio for each Covered Process Unit calculated pursuant to Paragraph 32.d(iv).

g. **LDAR Audit Report Submission.** If no corrective action is required under Paragraph 33, WDJG shall submit the LDAR Audit Report to EPA and CDPHE within 30 Days of the LDAR Audit Completion Date. If corrective action is required under Paragraph 33, WDJG shall submit the LDAR Audit Report to EPA and CDPHE within 120 Days of the LDAR Audit Completion Date, along with the Corrective Action Plan, if applicable. WDJG shall certify that the LDAR Audit Report submitted under this subparagraph is a copy of the report as initially provided to WDJG by the LDAR Auditor under subparagraph 32.e.

33. **Corrective Action.**

a. **Scope of Corrective Action.** WDJG shall complete necessary corrective action(s) at the Covered Facility to address:

(i) Any noncompliance or deficiencies identified during, or as a result of, the LDAR Audit; and

(ii) If the Comparative Monitoring Leak Ratio calculated pursuant to Paragraph 32.d(iv) is 3.0 or higher and the Comparative Monitoring Audit Leak Percentage calculated pursuant to Paragraph 32.d(ii) is greater than or equal to 0.5 percent at a Covered Facility, the causes of any equipment leaks that are resulting in such Comparative Monitoring Audit Leak Percentage and such Comparative Monitoring Leak Ratio at the Covered Facility.

b. **Timing/Schedule for Corrective Action.** If WDJG has not completed (or does not expect to complete) each corrective action required under Paragraph 33.a within 90 Days of the LDAR Audit Completion Date, WDJG shall develop a Corrective Action Plan (“CAP”) for the Covered Facility in accordance with Paragraph 33.c.

c. **Corrective Action Plan (“CAP”).**

(i) Required Contents of a CAP. A CAP shall:

(1) Explain the reasons why corrective action under Paragraph 33.a was not completed within 90 Days of the LDAR Audit Completion Date; and

(2) Propose a schedule for prompt completion of all such corrective action(s) as expeditiously as practical or, alternatively, document why noncompliance or deficiencies identified by the LDAR Audit are inaccurate.

(ii) **Submission of the CAP.** By no later than 120 Days after the LDAR Audit Completion Date, WDJG shall submit to EPA and CDPHE the LDAR Audit Report if not already submitted, and the CAP, as applicable.

(iii) **Review and Approval of the CAP.** Review and approval of the CAP by EPA, in consultation with the CDPHE, shall follow the procedures set forth in Paragraph 52 (Approval of Deliverables) of this Consent Decree. Disputes arising with respect to any aspect of a CAP shall be resolved in accordance with Section XI (Dispute Resolution).

(iv) **CAP Implementation.** WDJG shall implement the corrective action(s) in the approved CAP in accordance with the approved schedule and, if applicable, any approved CAP modification.

(v) **CAP Modification.** WDJG shall request modification of the approved CAP (including modification to the type of corrective action(s) performed or to the schedule of completion) by a written submission that includes an explanation of the reasons for the modification and that otherwise complies with Paragraph 33.c(i). The proposed CAP modification shall be submitted in accordance with Paragraph 33.c(ii) and reviewed and approved in accordance with Paragraph 33.c(iii).

34. **Certification of Compliance.**

a. Within 180 Days after the LDAR Audit Completion Date, WDJG shall certify to EPA and CDPHE that, to the signer's best knowledge and belief formed after reasonable inquiry:

(i) Except as otherwise identified, the Covered Facility is in compliance with all applicable LDAR Regulations and this LDAR Program;

(ii) WDJG has completed all corrective actions at the Covered Facility, if applicable, or is in the process of completing all corrective actions pursuant to a CAP; and

(iii) All equipment at each Covered Facility that is subject to LDAR Regulations has been identified and included in the LDAR Program.

b. To the extent that WDJG cannot certify to Paragraphs 34.a(i)–(iii), it shall specifically identify any deviations from Paragraphs 34.a(i)–(iii).

c. If all corrective actions required under Paragraph 33 are not complete at the time of initial certification under Paragraph 34.a, WDJG shall submit a supplemental certification by no later than 30 Days after the date of completion of all corrective actions.

### **C. OPTICAL GAS IMAGING (“OGI”) PROGRAM**

#### **35. Optical Gas Imaging Program.**

a. **OGI Protocol.** WDJG submitted a protocol for OGI monitoring of all Covered Equipment, and Fin Fan Plugs, at Covered Facilities (“OGI Protocol”). On April 4, 2023, EPA and CDPHE approved WDJG’s OGI Protocol. The approved OGI Protocol describes:

(i) Use of an optical gas imaging instrument (“OGI Instrument”) that complies with the requirements of 40 C.F.R. § 60.18(i)(1);

(ii) Consideration of parameters such as viewing distance, thermal background, wind speed, interferences (e.g., steam), and operator training, unless sufficiently addressed by the instrument manufacturer’s operating parameters. If WDJG is relying on manufacturer’s operating parameters, those parameters must be included in the OGI Protocol;

(iii) Instrument checks on each day an OGI Instrument is used that comply with the requirements of 40 C.F.R. § 60.18(i)(2) and ensure that the OGI Instrument can effectively detect Leaks under the conditions outlined in Paragraph 35.a(ii) above;

(iv) Maintenance of the OGI Instrument in accordance with the manufacturer's recommendations;

(v) Operation of the OGI Instrument in accordance with the manufacturer's operating parameters;

(vi) OGI Leaks consistent with Paragraph 11.11(iii); and

(vii) Performance of OGI monitoring by a technician certified to detect Leaks using OGI.

**b. Semi-Annual OGI Monitoring Program.**

(i) No later than 90 Days after the Effective Date, WDJG shall monitor all Covered Equipment in accordance with the OGI Protocol. OGI monitoring, consistent with the OGI Protocol, shall be conducted semi-annually after the first monitoring.

(ii) WDJG shall comply with Paragraph 35.d, below, following commencement of the first survey under the first semi-annual OGI monitoring.

**c. Fin Fan Plug OGI Monitoring Program.**

(i) By no later than 90 Days after the Effective Date, WDJG shall identify all Fin Fan Plugs at each Covered Facility, and WDJG shall commence to monitor all Fin Fan Plugs in accordance with the OGI Protocol as follows:

(1) WDJG shall, on a semi-annual frequency, monitor all Fin Fan Plugs with an OGI Instrument.

(2) By no later than 90 Days after the Effective Date, WDJG shall comply with Paragraph 35.d below with respect to Covered Facilities that operate Fin Fan Plugs.

d. **Repairs of Leaks.** This Paragraph applies to all Leaks detected during an OGI monitoring event required pursuant to this Paragraph 35.

(i) Covered Equipment: WDJG shall repair (or, if applicable, replace) and re-monitor Leaking Covered Equipment in accordance with Paragraphs 25–28, as applicable.

(ii) Fin Fan Plugs: With respect to Leaking Fin Fan Plugs, WDJG shall complete the repair no later than the end of the next Process Unit Shutdown; and

(iii) Perform Repair Verification Monitoring in accordance with Paragraph 25.a.

e. **Leaks from Equipment Other than Covered Equipment or Fin Fan Plugs.** If, during OGI monitoring under this Paragraph 35, WDJG detects Leaks from any components or equipment that are not Covered Equipment or Fin Fan Plugs, WDJG shall repair and re-monitor the components or equipment if required by Subpart OOOOa or any other applicable LDAR Regulation, or otherwise comply with the applicable Subpart OOOOa or other LDAR Regulation. For purposes of this Paragraph 35, equipment other than Covered Equipment or Fin Fan Plugs does not include those components and equipment that are designed to emit, including, for example, blowdowns of components or equipment and rod-packing exhaust vents.

#### **D. SECTION V COMPLIANCE REQUIREMENTS RECORDKEEPING**



36. WDJG shall keep all records required by this Paragraph to document compliance with Section V (Compliance Requirements) as provided in Paragraph 82. Upon request by EPA or CDPHE, WDJG shall make such documents available to the requesting party and shall provide, in electronic format if so requested, all LDAR monitoring data generated during the term of this Consent Decree.

a. **Paragraph 25 (Repairs).** WDJG shall record the following information for all repairs pursuant to Paragraphs 25 in the LDAR Database:

- (i) The date of all repair attempts;
- (ii) The repair methods used during each repair attempt;
- (iii) The date, time and Screening Values for all Repair Verification Monitoring or, if OGI is used, the video recording confirming the successful repair must be preserved pursuant to Paragraph 82; and
- (iv) If applicable, documentation of compliance with Paragraph 26 for Covered Equipment placed on DOR.

b. **Paragraph 30 (Training).** WDJG shall maintain a record of the dates of initial and refresher training for all LDAR Personnel, including a list of attendees. Upon written request by the EPA or CDPHE, WDJG shall provide the training records for LDAR Personnel.

c. **Paragraph 31 (Quality Assurance/Quality Control).** WDJG shall maintain a log that includes:

- (i) The date and time that the reviews, verifications, and observations required by Paragraph 31 are undertaken and the names of the individuals who completed these actions;

(ii) A description of all deficiencies detected or observed during the QA/QC Review required pursuant to Paragraph 31, and

(iii) A description of the nature and timing of any corrective actions taken.

d. **Paragraph 32 (LDAR Audits).** WDJG shall maintain all LDAR Audit Reports prepared under Paragraph 32, until five years after the termination of this Consent Decree.

e. **Paragraph 35 (Optical Gas Imaging).** WDJG shall maintain the following records for five years from the date of inspection:

(i) Identification of any Fin Fan Units at the Covered Facilities;

(ii) The dates, time, location, and camera operator for each OGI survey required by Paragraph 35 of this Consent Decree;

(iii) Records of the instrument checks conducted pursuant to 40 C.F.R. § 60.18(i)(4)(v);

(iv) Identification and location of Leaks and associated video recordings;

(v) Timing and efficacy of all first attempt and final repairs; and

(vi) Repair Verification Monitoring on all Leaking Covered Equipment, Fin Fan Plugs, and components or equipment other than Covered Equipment or Fin Fan Plugs.

## **VI. INCORPORATION OF CONSENT DECREE REQUIREMENTS INTO FEDERALLY ENFORCEABLE PERMITS**

37. **Permits Needed to Meet Compliance Obligations.** If any compliance obligation under Section V (Compliance Requirements) of this Consent Decree requires WDJG

to obtain a federal, state, or local permit or approval, WDJG shall submit timely and complete applications and take all other actions reasonably necessary to obtain all such permits or approvals. All applications must be submitted within two (2) years of the Effective Date. Any permit required under State law must comply with all applicable State statutory and regulatory requirements for obtaining such a permit. Except as required pursuant to Paragraphs 38 and 39 of this Consent Decree, it is not the intent of EPA or CDPHE to require compliance obligations under Section V (Compliance Requirements) of this Consent Decree to be incorporated into federally or state enforceable permits.

**38. Permits to Ensure Survival of Consent Decree Limits and Standards after Termination of Consent Decree.** Within two (2) years of the Effective Date, WDJG shall submit complete applications, amendments, or supplements to applicable permitting authorities for the Covered Facilities to incorporate the limits and standards of Subpart OOOOa, as may be amended (Paragraph 17), and/or, the most recent standards of performance adopted by EPA for new, reconstructed, and modified sources, as applied to natural gas processing plants and the OGI Program (Paragraph 35) into non-Title V, federally enforceable permits that will survive this Consent Decree's termination. To facilitate survival of the terms described in this Paragraph 38, as intended by the Parties, the Parties agree that WDJG shall submit permit applications to amend the following non-Title V permits in order to incorporate the limits and standards of Subpart OOOOa, as may be amended, and/or, the most recent standards of performance adopted by EPA for new, reconstructed, and modified sources, as applied to natural gas processing plants, and to incorporate the OGI Program:

- a. Permit Number 00WE0583, AIRS Point 018 (fugitive VOC emissions);
- b. Permit Number 93WE157-7, AIRS Point 042 (fugitive VOC emissions);

c. Permit Number 12WE1492, AIRS Point 063 (MDEA natural gas sweetening system for acid gas removal), AIRS Point 064 (MDEA natural gas sweetening system for acid gas removal), AIRS Point 065 (MDEA natural gas sweetening system for acid gas removal), AIRS Point 066 (MDEA natural gas sweetening system for acid gas removal), AIRS Point 067 (fugitive component leak emissions), and AIRS Point 071 (fugitive component leak emissions).

39. **Modification to Title V Operating Permits.** Within 12 months of the date the State takes final action on the permit applications submitted pursuant to Paragraph 38, WDJG shall submit a complete application to applicable permitting authorities to modify, amend or revise Title V Permit No. 95OPWE013 to incorporate the requirements identified in Paragraph 38 into the Title V permit. The Parties agree that the incorporation of these emission standards into the Title V Permit shall be done in accordance with applicable state or local Title V rules. The Parties agree that the incorporation may be by “amendment” under 40 C.F.R. § 70.7(d) and analogous state Title V rules, where allowed by state law.

## VII. ENVIRONMENTAL MITIGATION PROJECTS

40. WDJG shall implement “Environmental Mitigation Projects” that consist of:

- a. conversion of two existing glycol dehydrators located at the Frederick Compressor Station (Facility AIRS ID 123-0184, AIRS Points 006 and 017) to Closed-Loop Glycol Dehydrators that meet the requirements of Paragraphs 42;
- b. for any new glycol dehydration system located at a facility in Colorado that is owned and operated by WDJG, and which is constructed after the Effective Date, WDJG shall install and operate a Closed-Loop Glycol Dehydrator system that meets the requirements of Paragraph 42; and

c. the permanent retirement of two engines (Facility AIRS ID 123-0184, AIRS Point 004 (Units EU-41 and EU-42)), located at the Frederick Compressor Station according to Paragraph 43. The Environmental Mitigation Projects will reduce emissions of methane, VOC, and oxides of nitrogen.

41. WDJG shall install and operate the Closed-Loop Glycol Dehydrator system for the two glycol dehydrator conversions (Facility AIRS ID 123-0184, AIRS Points 006 and 017) within 12 months of the Effective Date.

42. For purposes of this Consent Decree, a “Closed-Loop Glycol Dehydrator” shall meet the specifications set forth in Appendix C and shall mean a dehydration unit that:

a. incorporates an integral vapor recovery function such that the dehydrator cannot operate independent of the vapor recovery function;

b. either returns the captured vapors to the inlet of the facility where such dehydrator is located or routes the captured vapors to that facility’s fuel gas supply header; and

c. has a PTE less than 1.0 TPY of VOCs, inclusive of VOC emissions from the reboiler burner.

43. Within 180 Days of the Effective Date, WDJG shall permanently remove AIRS Point 123-0184-004, Units EU-41 and EU-42 from operation by: (a) air-gapping the fuel supply of both engines by permanently removing at least a 2 inch section of piping so that the fuel system is not connected to fuel or a pipe; (b) air-gapping the units from any other process by permanently removing the compressor suction and at least a 2 inch section of the discharge piping; (c) destroying each engine block by removing with a cutting torch at least two square feet of metal from the block, below the oil level, such that the engine block cannot hold oil; and (d) destroying each main engine crank by plugging oil passageways with carbon steel plugs

permanently welded into place. WDJG shall submit photographic documentation to demonstrate compliance with this Paragraph 43 in the applicable Periodic Report required under Paragraph 45.

44. **Certifications.** As of the date of signing this Consent Decree WDJG certifies, for the Environmental Mitigation Projects described in Section VII:

a. That WDJG is not required to perform or develop this Environmental Mitigation Project by any federal, state, or local law or regulation; or is not required to perform or develop this Project by agreement, grant, or as injunctive relief awarded in any other action in any forum;

b. That WDJG was not planning or intending to construct, perform, or implement the Environmental Mitigation Project other than in settlement of the claims resolved in this Decree;

c. That WDJG has not received and will not receive credit for the Environmental Mitigation Project in any other enforcement action; and

d. That WDJG shall neither generate nor use any pollutant reductions from the emissions reductions from the Environmental Mitigation Project as netting reductions, pollutant offsets, or to apply for, obtain, trade, or sell any pollutant or emissions reduction credits, except for use in compliance with C.R.S. § 25-7-105(1)(e) and any regulations adopted pursuant to C.R.S. § 25-7-105(1)(e); and

e. That in connection with any communication to the public or shareholders regarding WDJG's actions or expenditures relating in any way to the Environmental Mitigation Project in this Decree, WDJG shall include prominently in the communication the information that the actions and expenditures were required as part of this Decree.

### VIII. REPORTING REQUIREMENTS

45. After the Effective Date and until termination of this Decree pursuant to Section XIX (Termination), WDJG shall submit to EPA and CDPHE a periodic report on the status of the Section V (Compliance Requirements) for each Covered Facility (“Periodic Report”). In the Periodic Report, WDJG shall also report on the status of the Environmental Mitigation Projects in Section VII. The initial status report shall cover the first 365-Day period after the Effective Date and shall be due within 30 Days after the end of the 365-Day period. Each subsequent status report shall cover a one-year period and shall be due within 30 Days after the end of the annual period covered. Each status report shall contain the following information:

- a. **LDAR Personnel.** The number of LDAR Personnel at the Covered Facility (excluding LDAR Personnel whose functions involve the non-monitoring aspects of repairing Leaks) and the approximate percentage of time each such person dedicated to performing LDAR functions;
- b. **Proactive Repair Attempt for Valves (Paragraph 25.b).** For each valve with a Screening Value greater than or equal to 250 ppm and less than 500 ppm identified in accordance with Paragraph 25.b, WDJG shall record and report:
  - (i) An identification of each piece of Covered Equipment that triggered a requirement under Paragraph 25.b;
  - (ii) The Screening Value detected at each piece of Covered Equipment, the date and time that the Screening Value was taken, and the identification numbers of the monitoring instrument and the technician;
  - (iii) The date of all repair attempts;
  - (iv) The repair methods used during each repair attempt and whether the equipment was repaired;

(v) The date, time and Screening Values for all Repair Verification Monitoring; and

(vi) If applicable, documentation of compliance with Paragraphs 25 through 26.

c. **Delay of Repair (Paragraph 26).** WDJG shall record and report:

(i) The maximum number of Pressure Relief Devices at each Covered Facility on the DOR list during the reporting period; and

(ii) A list of the Covered Equipment and Pressure Relief Devices on DOR at each Covered Facility during the reporting period and the amount of time each piece of equipment has been on DOR.

d. **Valve Replacement and Improvement Program (Paragraph 27).**

WDJG shall record and report:

(i) An identification of each piece of Covered Equipment that triggered a requirement under Paragraph 27;

(ii) The post-installation, -repacking, or -improvement Screening Value for each piece of Covered Equipment that triggered a requirement under Paragraph 27;

(iii) The date(s) of the action or activity taken to comply with Paragraph 27;

(iv) The repair method or type of action taken (i.e., replacement, repacking, or improvement);



(v) A list of any valves, including component ID, for which replacement or repacking is delayed beyond 30 Days under Paragraph 27.h and whether the delay is pursuant to Paragraph 27.e(ii)(A) or 27.h(i); and

(vi) If applicable, a description of the emergency or exigent circumstances for each instance when WDJG does not perform the required replacement or repacking in accordance with Paragraph 27.d(i);

(vii) Identification and explanation of any requirements of Paragraph 27 that were not completed;

(viii) Identification of the schedule for any known future replacements, re-packings, improvements, or valve eliminations, or any planned action to comply with Paragraph 27;

(ix) A description of any claims of commercial unavailability in accordance with Paragraph 27.a and Appendix A; and

(x) In the initial report only, a list of Existing Valves in Covered Process Units as described in Paragraph 27.b.

**e. Connector Replacement and Improvement (Paragraph 28).**

WDJG shall record and report:

(i) An identification of each piece of Covered Equipment that triggered replacement or improvement under Paragraph 28.b;

(ii) The monitoring results (Method 21 readings or OGI results) for each piece of Covered Equipment that triggered replacement or improvement under Paragraph 28;

(iii) A description of the existing and replacement connector types;

(iv) The date(s) of the action or activity taken to comply with Paragraph 28;

(v) Identification of any actions required under Paragraph 28 that were not taken along with an explanation for why the action was not taken; and

(vi) The schedule for any planned future action to comply with Paragraph 28.e.

f. **Training (Paragraph 30).** A description of the training conducted in accordance with Paragraph 30.

g. **QA/QC (Paragraph 31).** Any deviations identified in the QA/QC performed under Paragraph 31, as well as any corrective action taken under that Paragraph.

h. **Corrective Action (Paragraph 33).** WDJG shall record and report:

(i) A summary of all corrective actions taken pursuant to Paragraph 33.a during the reporting period and the specific deficiency (or deficiencies) in the LDAR Audit Report the corrective action addresses; and

(ii) The status of all actions under any CAP that was submitted during the reporting period, unless the CAP was submitted less than 30 Days before the status report was due.

i. **Optical Gas Imaging Program (Paragraph 35).** WDJG shall record and report:

(i) An identification and description of any non-compliance with the requirements of Paragraph 35;

(ii) The date and location (including the unique equipment identification number, if applicable) of each Leak detected during monitoring performed under Paragraph 35;

(iii) The date and location (including the unique equipment identification number, if applicable) of each emissions imaged by the OGI Instrument that WDJG verified were not Leaks using Method 21 instrument readings;

(iv) The date of all repair attempts performed pursuant to Paragraph 35;

(v) The repair method or type used during each repair attempt performed pursuant to Paragraph 35;

(vi) The date, time, and results of any post-repair re-monitoring with the OGI Instrument or Method 21 performed pursuant to Paragraph 35; and

(vii) If applicable, documentation of compliance with:

(1) Paragraph 26 for Covered Equipment placed on the DOR list; or

(2) Paragraph 35.e for delayed repair of equipment other than Covered Equipment or Fin Fan Unit plugs.

j. **Section VII (Environmental Mitigation Project).** In each report, WDJG shall provide the following information, as applicable, regarding the status of the mitigation project(s) in Section VII (Environmental Mitigation Project):

(i) A detailed description of the Environmental Mitigation Project as implemented;

(ii) A description of any problems encountered in completing the Environmental Mitigation Project and all related solutions;

(iii) A description of the environmental benefits (including an estimate of pollutant reductions) resulting from implementation of the Environmental Mitigation Project; and

(iv) A certification that the Environmental Mitigation Project has been fully implemented pursuant to the provisions of this Decree.

k. The status of permits and permit applications as set forth in Section VI (Incorporation of Consent Decree Requirements in Federally Enforceable Permits);

l. A description of any problems encountered or anticipated in complying with this Consent Decree, together with proposed solutions; and

m. A description of any noncompliance with the requirements of this Consent Decree and an explanation of the noncompliance's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such noncompliance. If the cause of the noncompliance cannot be fully explained at the time the report is due, WDJG shall so state in the report. In such an event, WDJG shall investigate the cause of the noncompliance and shall then submit an amendment to the report, including a full explanation of the cause of the noncompliance, within 30 Days of determining the cause of the noncompliance. Nothing in this Paragraph or the following Paragraph shall relieve WDJG of its obligation to provide the notice required by Section X (Force Majeure).

46. **Violation Reports.** If WDJG violates, or has reason to believe that it may violate, any requirement of this Consent Decree, WDJG shall notify the United States and the State of such violation and its likely duration, in writing, within 10 Business Days of when

WDJG first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, WDJG shall so state in the report. In such a case, WDJG shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day WDJG becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves WDJG of its obligation to provide the notice required by Section X (Force Majeure).

47. Whenever any violation of this Consent Decree or any other event affecting WDJG's performance under this Decree or the performance of a Covered Facility may pose an immediate threat to the public health or welfare or the environment, WDJG shall notify the United States and the State orally or by electronic mail as soon as possible, but no later than 24 hours after WDJG first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph (Violation Reports).

48. All reports submitted pursuant to Paragraph 32.e (Audit Reports), Paragraph 33.c (CAP), Paragraph 45 (Periodic Report), and Paragraph 46 (Violation Reports) of this Consent Decree shall be submitted to the EPA and CDPHE representatives designated in Section XV (Notices).

49. Each report submitted pursuant to Paragraph 32.e (Audit Reports), Paragraph 33.c (CAP), Paragraph 45 (Periodic Report), and Paragraph 46 (Violation Reports) of this Consent Decree by WDJG under this Section shall be signed by an official responsible for environmental management and compliance and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system

designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than 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.

50. This certification requirement does not apply to emergency or similar notifications, including those required by Paragraph 47, where compliance would be impractical.

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

52. **Approval of Deliverables.** After review of any plan, report, or other written submissions required under this Consent Decree and that requires EPA approval, EPA, after consultation with CDPHE, shall in writing, within 45 Days of receipt of the same: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission. EPA and CDPHE's failure to respond in writing within 45 Days shall be deemed approval.

a. If the submission is approved pursuant to Paragraph 52, WDJG shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 52, WDJG shall, upon written direction from EPA, after consultation with CDPHE, take all actions required by the approved plan, report, or other item that EPA, after consultation with CDPHE, determines are technically severable from any disapproved portions, subject to WDJG's right to dispute only the specified conditions or the disapproved portions, under Section XI (Dispute Resolution).

b. If the submission is disapproved in whole or in part pursuant to Paragraph 52, WDJG shall, within 45 Days or such other time as the Parties mutually agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, WDJG shall proceed in accordance with the preceding Paragraph.

c. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with CDPHE, may again require WDJG to correct any deficiencies, in accordance with the preceding Paragraphs, subject to WDJG's right to invoke Dispute Resolution under Section XI and the right of the United States and the State to seek stipulated penalties as provided in Section IX.

d. Any stipulated penalties applicable to the original or subsequent submissions, as provided in Section IX (Stipulated Penalties), shall accrue during the 45 Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part(s) pursuant to Paragraph 52; provided that, if the original submission was so deficient as to constitute a material breach of WDJG's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

## **IX. STIPULATED PENALTIES**

53. WDJG shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless waived or reduced under Paragraph 61 or excused under Section X (Force Majeure). A violation includes failing to perform any obligation required identified in Paragraphs 64, 65, or 66. Stipulated penalties will be split 50% to the United States and 50% to the State.

54. **Demand for Stipulated Penalties.** Subject to Section XI (Dispute Resolution) or any order of the Court, WDJG shall pay stipulated penalties upon written demand by the Plaintiffs no later than 60 Days after receipt of such a demand. The United States and the State will consult with each other prior to making a demand. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff. A demand for the payment of stipulated penalties shall identify the particular violation(s) that warrant(s) stipulated penalty, the stipulated penalty amount that the Plaintiffs are demanding for each violation (as can be best estimated), and the calculation method underlying the demand.

55. **Payment of Stipulated Penalties.** WDJG shall pay stipulated penalties owing to the United States and the State in the manner set forth and with the confirmation notices required by Section IV (Civil Penalty), except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid and shall afford WDJG 60 Days to remit payment.

56. **Failure to Pay Civil Penalty.** If WDJG fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, WDJG shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late. Late payment of the civil penalty, any accrued interest, and any accrued stipulated penalties shall be made in accordance with Paragraphs 13–16.

57. **Violations of Section V Compliance Requirements.** WDJG shall be liable for the following stipulated penalties for violations of the following Section V Compliance Requirements:



Consent Decree Violation	Stipulated Penalty	
i. <u>Paragraph 17</u> : Failure to implement any applicable provision of NSPS Subpart OOOOa not otherwise specified in the stipulated penalties below. If stipulated penalties are collected under this subparagraph, any applicable stipulated penalties in Paragraph 57 for the same activity underlying the alleged violation do not apply.	Period of Delay or Noncompliance	Penalty per Violation per Day
	1 – 15 Days	\$500
	16 – 30 Days	\$1,000
ii. <u>Paragraph 21 (Facility-Wide LDAR Document)</u> : Failure to timely update the document, as applicable, on an annual basis.	Period of Noncompliance	Penalty per Day late
	1 – 15 Days	\$300
	16 – 30 Days	\$400
iii. <u>Paragraph 22 (Method 21)</u> : Each failure to comply with Method 21 in performing LDAR Program monitoring.	Monitoring Frequency for the component	Penalty per monitoring event per Covered Process Unit
	Annual	\$20,000
	Quarterly	\$10,000
iv. <u>Paragraph 22 (Use of Data Logger)</u> : For each failure to use a monitoring device that is connected to a data logger (or an equivalent instrument or application), and for each failure, during each monitoring event, to record the Screening Value, date, time, and identification number of the monitoring instrument, and the identification of the technician.	Annual Quarterly Monthly	\$20,000 \$10,000 \$5,000
	\$100 per failure per piece of Covered Equipment monitored.	
	\$150 per Day for each Day the transfer is late.	
v. <u>Paragraph 22 (Monitoring Data Transfer)</u> : Each failure to transfer monitoring data to the LDAR Database on the schedule required by this Consent Decree.	\$150 per Day for each Day the transfer is late.	

<p>vi. <u>Paragraph 23 (Monitoring Frequency)</u>: Each failure to perform monitoring at the frequencies specified in Paragraph 23.</p>	<p>\$100 per piece of Covered Equipment or Pressure Relief Device per missed monitoring event, not to exceed \$25,000 per 30-Day period per Covered Process Unit.</p>		
<p>vii. <u>Paragraph 25 (First Attempt at Repair)</u>: Each failure to timely perform first attempts at repair as required by Paragraph 25. For purposes of these stipulated penalties, the term “repair” includes the required Repair Verification Monitoring in Paragraph 25.a after the repair attempt. If stipulated penalties are collected under this subparagraph, the stipulated penalties in Paragraph 57.ix do not apply.</p>	<p>\$150 per Day for each late Day, not to exceed \$1,500 per missed repair.</p>		
<p>viii. <u>Paragraph 25 (Final Attempt at Repair)</u>: Each failure to timely perform final attempts at repair as required by Paragraph 25 unless not required to do so under Paragraph 26 (Delay of Repair). For purposes of these stipulated penalties, the term “repair” includes the required Repair Verification Monitoring in Paragraph 25.a after the repair attempt. If stipulated penalties are collected under this subparagraph, the stipulated penalties in Paragraph 57.ix do not apply.</p>	<p>Covered Equipment Type</p>	<p>Penalty per piece of equipment per Day late</p>	<p>Not to exceed</p>
	<p>Valves/Connectors Pumps</p>	<p>\$300 \$1,200</p>	<p>\$45,000 \$150,000</p>
<p>ix. <u>Paragraph 25.a (Repair Verification Monitoring)</u>: Each failure to timely perform Repair Verification Monitoring as required by Paragraph 25 in circumstances where the first attempt to repair the piece of equipment to eliminate the Leak was made within 5 Days and the final attempt to repair the piece of equipment to eliminate the Leak was made within 15 Days.</p>	<p>Covered Equipment Type</p>	<p>Penalty per piece of equipment per Day late</p>	<p>Not to exceed</p>
	<p>Valves/Connectors Pumps</p>	<p>\$150 \$600</p>	<p>\$18,750 \$75,000</p>

<p>x. <u>Paragraph 25 (Proactive Repair)</u>: Each failure to perform proactive attempts at repair under Paragraph 25.b.</p>	<p>\$150 per Day for each late Day, not to exceed \$1,500 per Leak.</p>		
<p>xi. <u>Paragraph 26 (Delay of Repair)</u>: Each improper placement of a piece of Covered Equipment on the DOR list (e.g., placing a piece of Covered Equipment on the DOR list even though it is feasible to repair it without a Process Unit Shutdown) under Paragraph 26.</p>	<p>Covered Equipment type</p>	<p>Penalty per piece of Covered Equipment per Day on DOR list</p>	<p>Not to exceed</p>
	<p>Valves/Connectors Pumps</p>	<p>\$300 \$1,200</p>	<p>\$75,000 \$300,000</p>
<p>xii. <u>Paragraph 26.a (Supervisor Sign-Off for Delay of Repair)</u>: Each failure to comply with the requirement that a relevant supervisor sign off on placing a piece of Covered Equipment on the DOR list.</p>	<p>\$250 per piece of Covered Equipment.</p>		
<p>xiii. <u>Paragraph 26.b(i) (Repair of Devices on Delay of Repair)</u>: Each failure to comply with the requirements of Paragraph 26.b(i).</p>	<p>Refer to applicable stipulated penalties in Paragraphs 57.vii and viii.</p>		
<p>xiv. <u>Paragraph 26.b(ii) (Valve Replacement and Improvement on Delay of Repair)</u>: Each failure to comply with the requirements of Paragraph 26.b(ii).</p>	<p>Refer to applicable stipulated penalties in Paragraph 57.xix.</p>		
<p>xv. <u>Paragraph 26.c (Pressure Relief Devices on Delay of Repair)</u>: Each exceedance of the Pressure Relief Device limits listed in Paragraph 26.c.</p>	<p>\$150 per Pressure Relief Device that is over the limit, per Day, not to exceed \$30,000 for a Covered Facility per Quarter.</p>		
<p>xvi. <u>Paragraph 26.d (Length of Time for Covered Equipment and Pressure Relief Devices on Delay of Repair)</u>: For each exceedance of the time limits set forth in Paragraph 26.d.</p>	<p>Period of noncompliance</p>	<p>Penalty per component per Day late</p>	
	<p>1 – 15 Days</p>	<p>\$250</p>	
	<p>16 – 30 Days</p>	<p>\$350</p>	
<p>31 Days or More</p>	<p>\$500 per Day for each Day over 30</p>		

<p>xvii. <u>Paragraph 27.c (Work Practices)</u>: Each failure to comply with the work practice standards in Paragraph 27.c.</p>	<p>\$50 per violation per valve per Day, not to exceed \$30,000 for all valves in a Covered Process Unit per Quarter.</p>
<p>xviii. <u>Paragraph 27.d (Installing New Valves)</u>: Each failure to install Low-E Valves or valves fitted with Low-E Packing when required to do so under Paragraph 27.d, unless stipulated penalties are assessed under Paragraph 59.</p>	<p>\$20,000 per failure, except as provided in Paragraph 59, below.</p>
<p>xix. <u>Paragraphs 27.e and 27.f (Replacement or Repacking)</u>: Each failure, in violation of Paragraph 27.e or 27.f, to timely comply with the requirements to install Low-E Valves or Low-E Packing if a Process Unit Shutdown is not required, unless stipulated penalties are assessed under Paragraph 59.</p>	<p>\$500 per Day per failure, not to exceed \$20,000 per failure, except as provided in Paragraph 59, below.</p>
<p>xx. <u>Paragraph 27.h (Delay due to Required Process Unit Shutdown)</u>: Each failure, in violation of Paragraph 27.h, to install a Low-E Valves or Low-E Packing when required to do so during a Process Unit Shutdown, unless stipulated penalties are assessed under Paragraph 59.</p>	<p>\$20,000 per failure, except as provided in Paragraph 59, below.</p>
<p>xxi. <u>Paragraph 28.b (Connector Replacement and Improvement)</u>: Each failure to timely comply with the requirements regarding the replacement, improvement, or repair requirements for connectors under Paragraph 28.b.</p>	<p>\$100 per Day per failure, not to exceed \$5,000 per failure.</p>

xxii. <u>Paragraph 29 (Covered Equipment Addition)</u> : Each failure to add Covered Equipment to the LDAR Program when required to do so pursuant to the evaluation required by Paragraph 29.	\$300 per piece of Covered Equipment.	
xxiii. <u>Paragraph 30.a (Training Protocol)</u> : Each failure to timely develop a training protocol as required by Paragraph 30.a.	\$50 per Day late.	
xxiv. <u>Paragraphs 30.b–d (LDAR Personnel Training)</u> : Each failure to perform initial, refresher, or new LDAR Personnel training as required by Paragraphs 30.b.–d.	\$1,000 per person per month late.	
xxv. <u>Paragraph 31 (QA/QC)</u> : Each failure to perform any of the requirements relating to QA/QC as described in Paragraph 31.	\$1,000 per missed requirement per quarter.	
xxvi. <u>Paragraph 32.a (LDAR Audit Schedule)</u> : Each failure to conduct an LDAR Audit for a Covered Facility in accordance with the schedule set forth in Paragraph 32.a.	Period of noncompliance	Penalty per Day late
	1 – 15 Days	\$300
	16 – 30 Days	\$400
31 Days or More	\$500, not to exceed \$100,000 per LDAR Audit	
xxvii. <u>Paragraph 32 (LDAR Auditor Selection)</u> : Each failure to use a Third Party as an auditor as required under Paragraph 32; each use of a Third Party auditor that is not experienced in LDAR Audits, and each use of WDJG’s regular LDAR contractor or LDAR Personnel for a Third Party LDAR Audit of a Covered Facility.	\$25,000 per LDAR Audit.	

xxviii. <u>Paragraph 32.c (Audit Scope and Content)</u> : Except where comparative monitoring is required under Paragraph 32.d, each failure to comply with the requirements of Paragraph 32.c.	\$100,000 per LDAR Audit.	
xxix. <u>Paragraph 32.d (Comparative Monitoring)</u> : Each failure to comply with the Comparative Monitoring requirements of Paragraph 32.d.	\$50,000 per LDAR Audit.	
xxx. <u>Paragraph 32.g (LDAR Audit Report Submission)</u> : Each failure to timely submit an LDAR Audit Report under Paragraph 32.g.	Period of noncompliance	Penalty per Day late
	1 – 15 Days	\$300
	16 – 30 Days	\$400
	31 Days or More	\$500
xxxi. <u>Paragraph 33.a (Corrective Action)</u> : Each failure to implement corrective actions within 90 Days after the LDAR Audit Completion Date or pursuant to the schedule that WDJG must propose under Paragraph 33.c if the corrective action cannot be completed in 90 Days.	Period of noncompliance	Penalty per Day Late
	1 – 15 Days	\$500
	16 – 30 Days	\$750
	31 Days or More	\$1,000 per Day, not to exceed \$200,000 per LDAR Audit
xxxii. <u>Paragraphs 33.b–c (Corrective Action Plan Submittal)</u> : Each failure to timely submit a Corrective Action Plan that conforms to the requirements of Paragraphs 33.b–c.	Period of noncompliance	Penalty per Day late
	1 – 15 Days	\$100
	16 – 30 Days	\$250
	31 Days or More	\$500, not to exceed \$100,000 per LDAR Audit
xxxiii. <u>Paragraph 34 (Certification of Compliance)</u> : Each failure to timely submit a Certification of Compliance that conforms to the requirements of Paragraph 34.	Period of noncompliance	Penalty per Day late
	1 – 15 Days	\$100
	16 – 30 Days	\$250
	31 Days or More	\$500 not to exceed \$75,000

xxxiv. <u>Paragraph 35.b (Semi-Annual OGI Monitoring)</u> : Each failure to conduct OGI monitoring of Covered Equipment in accordance with the OGI Protocol, as required by Paragraph 35.b.	\$10,000 per missed event		
xxxv. <u>Paragraph 35.c (Fin Fan Unit OGI Monitoring)</u> : Each failure to conduct OGI monitoring at Fin Fan Units as required by Paragraph 35.c.	\$10,000 per missed event		
xxxvi. <u>Paragraph 35.d (Repairs of Leaks)</u> : Each failure to perform timely repair of Covered Equipment Leaks identified through OGI or failure to conduct timely repair of Fin Fan Unit Leaks identified through OGI, as required by Paragraph 35.d.	Equipment Type	Penalty per component per Day late	Not to exceed
	Valves	\$300	\$45,000
	Pumps	\$1,200	\$150,000
	Fin Fan Plug	\$500	\$50,000
xxxvii. <u>Paragraph 36 (Section V Recordkeeping Requirements)</u> : Each failure to comply with any recordkeeping or submission (at the request of the Plaintiffs) requirement in Paragraph 36 not specifically identified above in this Table.	Period of noncompliance		Penalty per Day late
	1 – 15 Days		\$100
	16 – 30 Days		\$250
	31 Days or More		\$500

58. **Other Requirements.** WDJG shall be liable for the following stipulated penalties for violations of these Consent Decree requirements:

<b>Consent Decree Violation</b>	<b>Stipulated Penalty</b>	
<u>Section VI (Permits)</u> : Failure to timely apply for any permit or approval in accordance with Section VI.	\$1,000 per Day per violation	
<u>Section VII (Environmental Mitigation Project)</u> : Failure to undertake or satisfactorily complete the Environmental Mitigation Project in compliance with Section VII.	Period of noncompliance	Penalty per Violation per Day
	1 – 15 Days	\$750
	16 – 30 Days	\$1,000
	31 Days or More	\$1,500

Section VIII (Reporting Requirements): The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of this Consent Decree.	Period of noncompliance	Penalty per Day late
	1 – 15 Days	\$100
	16 – 30 Days	\$250
	31 Days or More	\$1,500

**59. Stipulated Penalties in Lieu of those in Paragraphs 57.(xviii), (xix) and (xx).**

a. For purposes of this Paragraph, the term “Non-Compliant Valve” means a valve that is either: (i) not a Low-E Valve; or (ii) not fitted with Low-E Packing. The term “Compliant Valve” means a valve that is either: (i) a Low-E Valve; or (ii) fitted with Low-E Packing.

b. The stipulated penalties in Paragraph 59(c) are to be used instead of those in Paragraphs 57.(xviii), (xix), and (xx) when a Non-Compliant Valve is installed instead of a Compliant Valve and all of the following requirements are met:

- (i) WDJG discovers the failure involved before a government agency;
- (ii) WDJG promptly reports the failure to EPA and CDPHE;
- (iii) In the report, WDJG sets forth a schedule for promptly replacing the Non-Compliant Valve with a Compliant Valve; provided, however, that WDJG shall not be required to carry out an unscheduled shutdown of the affected Covered Process Unit in proposing the schedule unless WDJG so chooses;
- (iv) WDJG monitors the Non-Compliant Valve once a month from the time of its discovery until the valve is replaced with a Compliant Valve and no Screening Values above 500 ppm are recorded;



(v) WDJG replaces the Non-Compliant Valve or Valve Packing with a Compliant Valve or Valve Packing in accordance with the schedule set forth in Paragraph 59.b(iii); and

(vi) WDJG demonstrates that in good faith it intended to install a Compliant Valve but inadvertently installed a Non-Compliant Valve.

c. The following stipulated penalties shall apply under the circumstances in Paragraph 59.b:

(i) In lieu of the penalty in Paragraph 57(xviii), \$2,000 per failure.

(ii) In lieu of the penalty in Paragraph 57(xix), \$50 per Day per failure, not to exceed \$2,000.

(iii) In lieu of the penalty in Paragraph 56(xx), \$2,000 per failure.

60. **Other Stipulated Penalties.** Any other violation of this Consent Decree not otherwise specified in the stipulated penalties above: \$1,000 per violation per Day.

61. **Waiver or Reduction of Payment.** The United States or the State may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree.

62. **Accrual of Stipulated Penalties.**

a. Stipulated penalties will begin to accrue on the Day after performance is due or the Day a violation occurs, whichever is applicable, and will continue to accrue (unless otherwise stated in Paragraphs 57 through 59 until performance is satisfactorily completed or until the violation ceases. Subject to Paragraphs 57 through 59, stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. The penalties that accrue for each

violation or failure to perform an obligation do not increase from one period of noncompliance to the next unless the violations or failures to perform are continuous.

b. **Accrual of Stipulated Penalties During Dispute Resolution.** Stipulated penalties shall continue to accrue during any Dispute Resolution, but need not be paid until the following:

(i) If the dispute is resolved by agreement or a decision by the United States or the State that is not appealed to the Court, WDJG shall pay accrued penalties determined to be owing, together with interest, to the United States and the State within 60 Days of the effective date of the agreement or the expiration of the period for seeking judicial resolution of a dispute set forth in Paragraph 76.

(ii) If the dispute is appealed to the Court and the United States and the State prevail, in whole or in part, WDJG shall pay all penalties determined by the Court to be owed, together with interest, within 60 Days of receiving the Court's final decision or order, except if the District Court's decision is appealed, and then as provided in Subparagraph (iii), below.

(iii) If any Party appeals the District Court's decision, WDJG shall pay all penalties determined to be owing by the final decision of the appellate court, together with interest, within 60 Days of receiving the final appellate court decision.

63. If WDJG fails to pay stipulated penalties according to the terms of this Consent Decree, WDJG shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

64. The payment of stipulated penalties and interest, if any, shall not alter in any way WDJG's obligation to complete the performance of this Consent Decree's requirements.

65. **Non-Exclusivity of Remedy.** Stipulated penalties are not the United States' or State's exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the United States and the State expressly reserve the right to seek any other relief they deem appropriate for WDJG's violation of this Decree or applicable law. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

#### **X. FORCE MAJEURE**

66. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of WDJG, of any entity controlled by WDJG, or of WDJG's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite WDJG's best efforts to fulfill the obligation. The requirement that WDJG exercise "best efforts to fulfill the obligation" includes efforts to anticipate any potential force majeure event and efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) after it has occurred in an effort to minimize the delay and any adverse effects. "Force Majeure" does not include WDJG's financial inability to perform any obligation under this Consent Decree.

67. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, WDJG shall provide notice verbally or by email to EPA and CDPHE within 72 hours of when WDJG first knew that the event might cause a delay in accordance with Section XV (Notices). Within 15 Days thereafter, WDJG shall provide in writing to EPA and CDPHE an explanation and

description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; WDJG's rationale for attributing such delay to a force majeure event if it intends to assert such a claim. WDJG shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude WDJG from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. WDJG shall be deemed to know of any circumstance of which WDJG, any entity controlled by WDJG, or WDJG's contractors knew or should have known.

68. If EPA, after consultation with CDPHE, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after consultation with CDPHE, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify WDJG in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

69. If EPA, after consultation with CDPHE, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify WDJG in writing of its decision.

70. If WDJG elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than 30 Days after receipt of EPA's notice. In any

such proceeding, WDJG shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that WDJG complied with the requirements of Paragraphs 66 and 67. If WDJG carries this burden, the delay at issue shall be deemed not to be a violation by WDJG of the affected obligation of this Consent Decree identified to EPA, CDPHE, and the Court.

## **XI. DISPUTE RESOLUTION**

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

72. **Meet and Confer Regarding Permitting Timelines.** At such time that WDJG believes it has completed the following: (1) payment of the civil penalties and any accrued stipulated penalties as required by this Consent Decree; and (2) the requirements of Section VII (Environmental Mitigation Projects), and no sooner than 365 Days after submission of completed permit applications for the permits referenced in Paragraph 38, WDJG may request a meet and confer with the Plaintiffs, by serving on the United States and the State, pursuant to Section XVI (Notices) a written Status of Permitting, which shall include, but need not be limited to, any factual data, analysis, or description regarding the status of the incorporation of certain Consent Decree terms into federally enforceable permits, as required by Paragraph 38. The period of discussions regarding the Status of Permitting shall not exceed 30 Days, during which time the Parties shall meet in good faith to resolve issues identified in the Status of Permitting, unless that period is mutually modified by written agreement. If the Parties cannot reach a mutual resolution of the issues identified in the Status of Permitting, which could include

an agreed upon timeline by which the relevant permits will issue or other resolution to address any delay in the issuance of such permits, WDJG may invoke the Formal Dispute Resolution procedures, as set forth below, without a need to proceed with Informal Dispute Resolution.

73. **Informal Dispute Resolution.** Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when WDJG sends the United States and the State a written Notice of Dispute pursuant to Section XV (Notices). Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 45 Days from the date the United States receives the Notice of Dispute, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with the State, shall be considered binding unless, within 45 Days after the conclusion of the informal negotiation period, WDJG invokes formal dispute resolution procedures as set forth below.

74. **Formal Dispute Resolution.** WDJG shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State a written Statement of Position regarding the matter in dispute pursuant to Section XV (Notices). The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting WDJG's position and any supporting documentation relied upon by WDJG.

75. The United States, after consultation with the State, shall serve its Statement of Position within 45 Days of receipt of WDJG's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United

States. The United States' Statement of Position shall be binding on WDJG, unless WDJG files a motion for judicial review of the dispute in accordance with the following Paragraph.

76. WDJG may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of WDJG's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

77. The United States and the State shall respond to WDJG's motion within the time period allowed by the Local Rules of this Court. WDJG may file a reply memorandum unless doing so is barred by the Local Rules.

78. **Standard of Review.**

a. **Disputes Concerning Matters Accorded Record Review.** Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 74 (Formal Dispute Resolution) pertaining to any matter that involves EPA's exercise of discretion under this Consent Decree and all other disputes that are accorded review on the administrative record, under applicable principles of administrative law, WDJG shall have the burden of demonstrating, based on the administrative record, as provided under the Administrative Procedures Act, 5 U.S.C. § 500 et seq. (including the Parties' Statements of Position), that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

79. **Other Disputes.** Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 73 (Informal Dispute Resolution), WDJG shall bear the burden of demonstrating that its position complies with this Consent Decree.

80. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of WDJG under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 62 (Accrual of Stipulated Penalties). If WDJG does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

## **XII. INFORMATION COLLECTION AND RETENTION**

81. EPA and CDPHE and their representatives and employees shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon notice to WDJG and presentation of credentials, to:

- (i) Monitor the progress of activities required under this Consent Decree;
- (ii) Verify any data or information submitted to the United States or the State in accordance with this Consent Decree's terms;
- (iii) Obtain samples related to compliance with this Consent Decree;
- (iv) Obtain documentary evidence, including photographs and similar data related to compliance with this Consent Decree; and
- (v) Assess WDJG's compliance with this Consent Decree.

Within a reasonable time period, EPA and CDPHE will provide WDJG copies of any



documentary evidence obtained by EPA or CDPHE during a site visit under this Paragraph 81, including but not limited to photographs or the results of sampling taken.

82. Until 5 years after the termination of this Consent Decree, WDJG shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that reasonably relate to WDJG's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by EPA or CDPHE, WDJG shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

83. Except for emissions data, including Screening Values and OGI monitoring recordings, WDJG may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that WDJG seeks to protect as CBI, WDJG shall follow the procedures set forth in 40 C.F.R. Part 2. WDJG may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If WDJG asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a general description of the subject of the document, record, or information; and (f) the privilege asserted by WDJG. However, no documents, records, or other

information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

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

### **XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

85. This Consent Decree resolves all civil claims, relating to the Covered Facilities, of the United States and the State against WDJG arising under the LDAR provisions in 40 C.F.R. Part 60, Subparts KKK, OOOO, OOOOa (and by reference 40 C.F.R. Part 60, Subparts VV and VVa) and 40 C.F.R. Part 63, Subpart HH (and by reference 40 C.F.R. Part 61, Subpart V) from the date those claims accrued through the Date of Lodging, including: (1) the violations alleged in the Complaint filed in this action (including all tables itemizing alleged violations); (2) the Notice of Violation issued by the EPA to Kerr-McGee on February 27, 2019; (3) the April 12, 2022 EPA Inspection Report; (4) the State's Compliance Advisory No. 2019-160 (alleged violations A & B); (5) the State's Compliance Advisory No. 2020-044 (alleged violations A & D); (6) the State's Compliance Advisory No. 2021-072 (alleged violation E); (7) the State's Compliance Advisory No. 2023-023 (alleged violation R); and (8) any alleged violation of 40 C.F.R. § 60.636(a) (Subpart KKK) and 40 C.F.R. § 60.487(a) (Subpart VV) for WDJG's failure to timely submit the required semiannual report for the Platte Valley Gas Plant for the reporting period starting on April 1, 2022, and ending on September 30, 2022.

86. The United States and the State reserve all legal and equitable remedies available to enforce this Consent Decree's provisions. Except as stated in Paragraph 85, this Consent

Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws or state laws, regulations, or permit conditions. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Covered Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

87. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Covered Facilities or WDJG's violations, WDJG shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 85.

88. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. WDJG is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; and WDJG's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that WDJG's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, 42 U.S.C. §§ 7411 and 7412, or with any other provisions of federal, State, or local laws, regulations, or permits.

89. This Consent Decree does not limit or affect the rights of WDJG or of the United States and the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against WDJG, except as otherwise provided by law.

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

#### **XIV. COSTS**

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

#### **XV. NOTICES**

92. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing by electronic mail and addressed as follows, except that certain communications contemplated herein and elsewhere in this Consent Decree may be submitted by WDJG verbally or in writing via mail to the United States, EPA, the State and CDPHE:

As to the United States by email: eescdcopy.enrd@usdoj.gov  
Re: DJ # 09-5-2-1-11710

As to the United States by mail: EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 09-5-2-1-11710

As to EPA by mail: Director, Air Enforcement Division  
Office of Civil Enforcement  
USEPA Headquarters, MC 2242A  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

U.S. EPA Region 8  
Branch Manager, Air & Toxics Technical  
Enforcement Branch  
Enforcement and Compliance Assurance Division  
Technical Enforcement Program  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

As to EPA by email: Patefield.Scott@epa.gov  
Portmess.Jessica@epa.gov  
Sullivan.Tim@epa.gov

As to the State of Colorado: First Assistant Attorney General, Air Quality Unit  
Natural Resources Section  
Colorado Attorney General's Office  
1300 Broadway, 7th Floor  
Denver, CO 80203

As to the State of Colorado by email: robyn.wille@coag.gov  
Michael.landis@coag.gov

As to CDPHE: Compliance & Enforcement Program Manager  
Colorado Department of Public Health and  
Environment  
Air Pollution Control Division  
APCD – SSP – B1  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

As to CDPHE by email: shannon.mcmillan@state.co.us  
Jennifer.morse@state.co.us  
Stephen.riley@state.co.us

As to WDJG by mail: Michael Forsyth, SVP, Northern Operations  
Candace Uduebor, Counsel - HSE  
1099 18th Street, Suite 1800  
Denver, Colorado 80202

Ba Nguyen, Associate General Counsel  
Western Midstream  
9950 Woodloch Forest Drive, Suite 2800  
The Woodlands, Texas 77380

As to WDJG by email:

mike.forsyth@westernmidstream.com  
ba.nguyen@westernmidstream.com  
candace.uduebor@westernmidstream.com  
ana.gutierrez@hoganlovells.com

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

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

#### **XVI. EFFECTIVE DATE**

95. The Effective Date of this Consent Decree shall be the date upon which approval of the Consent Decree is recorded on the Court's docket.

#### **XVII. RETENTION OF JURISDICTION**

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

#### **XVIII. MODIFICATION**

97. The terms of this Consent Decree, including any attached appendices, may be modified only by subsequent written agreement signed by all the Parties according to the following procedure:

a. Non-material modifications to this Consent Decree shall be effective when signed in writing by the United States, the State of Colorado, and WDJG. The United States shall file any such non-material modifications with the Court on a periodic basis.

b. Material modifications to this Consent Decree shall be in writing, signed by United States, the State of Colorado, and WDJG, shall be filed by the United States, and shall be effective upon approval by the Court.

98. The Parties acknowledge that on November 15, 2021, EPA proposed new rules at 86 Federal Register 63,110–63,263 titled “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,” and on December 6, 2022, EPA supplemented its proposed rules at 87 Federal Register 74,702–74,847 titled “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review.” To the extent that these standards, if finalized, or any other standards promulgated prior to Termination under Section XIX affect WDJG’s compliance with this Consent Decree, the Parties acknowledge and agree that a modification of this Consent Decree may be necessary. Any such modification will be subject to this Section XVIII.

99. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraphs 78 and 79, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

#### **XIX. TERMINATION**

100. **Request for Consent Decree Termination.** At such time that WDJG believes it has completed the following requirements, WDJG may send the United States and State a

Request for Termination of this Consent Decree, which WDJG shall certify in accordance with Section VIII (Reporting Requirements), stating that WDJG has satisfied the following requirements:

- (i) Payment of the civil penalties and any accrued stipulated penalties as required by this Consent Decree;
- (ii) Completed the requirements of Section V (Compliance Requirements);
- (iii) Completed the requirements of Section VII (Environmental Mitigation Projects);
- (iv) Applied for and received the applicable non-Title V permits for the Covered Facilities in accordance with Section VI (Incorporation of Consent Decree Requirements in Federally Enforceable Permits).
- (v) Applied for modification, amendment, or revision to the applicable Title V permits for the Covered Facilities in accordance with Section VI (Incorporation of Consent Decree Requirements into Federally Enforceable Permits).
- (vi) Paid all applicable permitting fees due (including but not limited to Title V or NSR permits) for Covered Facilities.

101. Following the final Audit Certification Date for the Third Audit (Paragraph 34), WDJG may submit a Request for Termination or a Request for Partial Termination. In either the Request for Termination or Request for Partial Termination, WDJG must demonstrate that it has maintained compliance with this Consent Decree for the one-year period immediately preceding the Request. The Request for Termination or Request for Partial Termination must be



accompanied by a back-up copy of the LDAR Database for each Covered Facility and any other necessary supporting documentation.

102. **Request for Partial Termination.** At such time that WDJG believes it has completed the requirements in Paragraph 100(i)–(iii), WDJG may send the United States and the State a Request for Partial Termination. Any Request for Partial Termination shall be certified in accordance with Section VIII (Reporting Requirements) and state that WDJG has satisfied the requirements in Paragraph 100(i)–(iii).

103. As soon as practicable following receipt by the United States and the State of WDJG’s Request for Termination or Request for Partial Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether WDJG has complied with the requirements for full or partial termination of this Consent Decree. If the United States, after consultation with the State, agrees that the Decree may be terminated in full or in part, the Parties shall submit, for the Court’s approval, a joint stipulation terminating the Decree in full or part.

104. If the United States, after consultation with the State, does not agree that the Decree may be terminated in full or in part, the Plaintiffs shall within 60 Days notify WDJG in writing of the remaining obligations necessary to satisfy a Request for Termination (Paragraph 100) or a Request for Partial Termination (Paragraph 102). If the Parties disagree on the remaining obligations necessary to satisfy a Request for Termination (Paragraph 100) or a Request for Partial Termination (Paragraph 102), WDJG may invoke Dispute Resolution under Section XI of this Decree. However, WDJG shall not seek Dispute Resolution of any dispute regarding termination until 45 Days after service of its Request for Termination.

## **XX. PUBLIC PARTICIPATION**

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

## **XXI. SIGNATORIES/SERVICE**

106. Each undersigned representative of WDJG, the State of Colorado, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

107. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. WDJG agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

## **XXII. INTEGRATION**

108. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or

written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

**XXIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION**

109. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability), Paragraph 9; Section V (Compliance Requirements), Paragraphs 17–36; Section VI (Incorporation of Consent Decree Requirements into Federally Enforceable Permits), Paragraphs 37–39; Section VII (Environmental Mitigation Projects), Paragraph 40–44; Section VIII (Reporting Requirements), Paragraphs 45–49 and 52; and Section XII (Information Collection and Retention), Paragraphs 81–82 is restitution or required to come into compliance with law.

**XXIV. FINAL JUDGMENT**

110. Upon approval of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State of Colorado, and WDJG.

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UNITED STATES DISTRICT JUDGE  
District of Colorado

Subject to the notice and comment requirements of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Colorado v. WES DJ Gathering LLC f/k/a Kerr-McGee Gathering LLC.

**FOR THE UNITED STATES OF AMERICA:**

TODD KIM  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

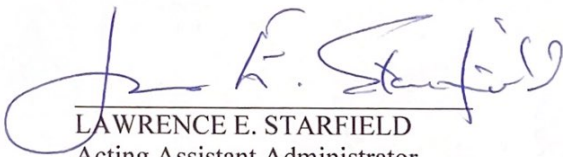
4/20/2023  
Date

  
HEIDI HOFFMAN  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

Subject to the notice and comment requirements of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Colorado v. WES DJ Gathering LLC f/k/a Kerr-McGee Gathering LLC.

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:**

Date: 4/18/2023



LAWRENCE E. STARFIELD  
Acting Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

ROSEMARIE A. KELLEY  
Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

MARY E. GREENE  
Director, Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

TIMOTHY J. SULLIVAN  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

Subject to the notice and comment requirements of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Colorado v. WES DJ Gathering LLC f/k/a Kerr-McGee Gathering LLC.

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8:**

**KATHLEEN BECKER** Digitally signed by KATHLEEN BECKER  
Date: 2023.04.18 16:36:19 -06'00'

\_\_\_\_\_  
Date

\_\_\_\_\_  
KATHLEEN BECKER  
Regional Administrator  
U.S. Environmental Protection Agency, Region 8

**KENNETH SCHEFSKI** Digitally signed by KENNETH SCHEFSKI  
Date: 2023.04.13 15:58:18 -06'00'

\_\_\_\_\_  
Date

\_\_\_\_\_  
KENNETH C. SCHEFSKI  
Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 8

**SUZANNE BOHAN** Digitally signed by SUZANNE BOHAN  
Date: 2023.04.12 18:36:08 -06'00'

\_\_\_\_\_  
Date


\_\_\_\_\_  
SUZANNE J. BOHAN  
Division Director, Enforcement and Compliance Assurance  
Division  
U.S. Environmental Protection Agency, Region 8

JESSICA PORTMESS  
Senior Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 8

Subject to the notice and comment requirements of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Colorado v. WES DJ Gathering LLC f/k/a Kerr-McGee Gathering LLC.

**FOR THE STATE OF COLORADO:**

Date: 4/11/2023



MICHAEL OGLETREE  
Director  
Air Pollution Control Division  
Colorado Department of Public Health and Environment

PHILIP WEISER  
Attorney General  
State of Colorado

Date: 4/12/23



MICHAEL LANDIS  
Assistant Attorney General  
Natural Resources and Environment Section  
Colorado Department of Law

Subject to the notice and comment requirements of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Colorado v. WES DJ Gathering LLC f/k/a Kerr-McGee Gathering LLC.

**FOR WDJG:**

4/5/2023

Date



MICHAEL FORSYTH  
SVP, Northern Operations  
Western Midstream

4/5/2023

Date



ANA MARIA GUTIERREZ  
Partner  
Hogan Lovells US LLP

TOM BOER  
Partner  
Hogan Lovells US LLP



## APPENDICES

The following Appendices are attached to and part of this Consent Decree:

“Appendix A” is the Factors to be Considered and Procedures to be Followed to Claim Commercial Unavailability;

“Appendix B” is the list of Existing Valves on Delay of Repair prior to the Effective Date, subject to Paragraph 27.f.; and

“Appendix C” is Specifications for the Closed-Loop Glycol Dehydrator Environmental Mitigation Projects.

Dated and entered this \_\_ day of \_\_\_\_\_, 2023

## APPENDIX A

### **Factors to be Considered and Procedures to be Followed to Claim Commercial Unavailability**

This Appendix outlines the factors to be taken into consideration and the procedures to be followed for WDJG to assert that a certified Low-Emissions Valve or a valve that utilizes certified Low-Emissions Packing is “commercially unavailable” pursuant to Paragraph 27.a of the Consent Decree.

#### **I. FACTORS FOR DETERMINING COMMERCIAL UNAVAILABILITY**

A. Nothing in this Consent Decree or this Appendix requires WDJG to utilize any valve or packing that is not suitable for its intended use in a Covered Process Unit.

B. The following factors are relevant in determining whether a certified Low-Emissions Valve or a valve that utilizes certified Low-Emissions Packing is commercially unavailable to replace or repack an Existing Covered Valve:

1. Valve type (e.g., ball, gate, butterfly, needle) (neither the Consent Decree nor this Appendix requires consideration of a different type of valve than the type that is being replaced);
2. Nominal valve size (e.g., 2 inches, 4 inches);
3. Compatibility of materials of construction with process chemistry and product quality requirements;
4. Valve operating conditions (e.g., temperature, pressure);
5. Service life;
6. Packing friction (e.g., impact on operability of valve);
7. Whether the valve is part of a packaged system;
8. Retrofit requirements (e.g., re-piping or space limitations); and
9. Other relevant considerations.

C. The following factors may also be relevant, depending upon the Covered Process Unit or equipment where the valve is located:

1. In cases where the valve is a component of equipment that WDJG is licensing or leasing from a third party, valve or valve packing

specifications identified by the lessor or licensor of the equipment of which the valve is a component;

2. Valve or valve packing vendor, distributor, or manufacturer recommendations for the relevant Covered Equipment.
3. If the valve or valve packing requires replacement with the original equipment based on a commercially reasonable assessment of the quality, reliability, and experience in the relevant market by WDJG, the vendor, distributor, or manufacturer.

**II. PROCEDURES FOR ASSERTING COMMERCIAL UNAVAILABILITY:** WDJG shall comply with the following procedures if it seeks to assert commercial unavailability under Paragraph 27.a of the Consent Decree:

A. WDJG must contact a reasonable number of vendors or distributors of valves or valve packing that WDJG, in good faith, believes may have valves or valve packing suitable for the intended use, taking into account the relevant factors listed in Section I of this Appendix.

1. For purposes of this Consent Decree, a reasonable number of vendors or distributors presumptively shall mean no less than three.
2. If fewer than three vendors or distributors are contacted, the determination of whether such fewer number is reasonable shall be based on Factors set forth in Section I.C., above, or on a demonstration that fewer than three vendors or distributors offer valves or valve packing considering Factors set forth in Section I.B., above.

B. WDJG shall obtain a written representation from each vendor or distributor, or equivalent documentation, that a particular valve or valve packing is not available as “Low-Emissions” from that vendor or distributor for the intended conditions or use.

1. “Equivalent documentation” may include e-mail or other correspondence or data showing that a valve or valve packing suitable for the intended use does not meet the definition of Low-Emissions Valve or Low-Emissions Packing in the Consent Decree or that the valve or packing is not suitable for the intended use.
2. If a vendor or distributor does not respond or refuses to provide a written representation or equivalent documentation, “equivalent documentation” may consist of records of WDJG’s attempts to obtain a response from such vendor or distributor.
3. If a vendor or distributor will not enter into or sign a required master service agreement or other similar contract with WDJG, or a master service agreement or similar contract with WDJG cannot be timely

negotiated, “equivalent documentation” may consist of records of WDJG’s attempt to enter into a master service agreement or similar contract with the vendor or distributor.

C. Each status report required by Paragraph 45 of the Consent Decree shall identify each instance when a Low-Emissions Valve or a valve that utilizes Low-Emissions Packing was not commercially available. WDJG shall provide a complete explanation of the basis for its claim of commercial unavailability, including, as an attachment to the status report, all relevant documentation. For purposes of all other similar valves, the report shall be valid for a period of 365 Days from the date of the report, taking into account the factors listed in Section I. The report shall be valid and satisfies all obligations under Paragraph 27 with respect to that specific valve.

**APPENDIX B****Existing Valves on Delay of Repair Prior to the Effective Date, Subject to Paragraph 27.f.**

<b>Facility</b>	<b>Process Unit Code</b>	<b>Tag No.</b>
Platte Valley	TR 2 FRC	5677
Platte Valley	TR 2 FRC	6401
Platte Valley	TR 1 FRC	1751
Platte Valley	TR 1 CRY	3636
Platte Valley	STORAGE	1186
Platte Valley	INLET	3537
Platte Valley	INLET	1028
Platte Valley	TR 1 FRC	1752
Platte Valley	STORAGE	4782
Platte Valley	TR 2 CRY	3349
Platte Valley	TR 1 CRY	3644
Lancaster	NGL STR	1373
Lancaster	CRYO2	157014
Lancaster	CRYO	2366
Lancaster	INLET	7
Lancaster	NGL STR	2971
Lancaster	CRYO	1732D
Lancaster	REFRIG	2453
Fort Lupton	INLET	5228-000
Fort Lupton	SOUTH COMPRESSION	88280-000
Fort Lupton	STABILIZATION	1563-000
Fort Lupton	STABILIZATION	1673-000
Fort Lupton	STABILIZATION	1706-000
Fort Lupton	SOUTH COMPRESSION	88132-000
Fort Lupton	INLET	4610-000

## APPENDIX C

### Specifications for a Closed-Loop Glycol Dehydrator Environmental Mitigation Project

As stated in Section VII of the Consent Decree, a Closed-Loop Glycol Dehydrator must meet the requirements set forth in this Appendix C. Specifically, a Closed-Loop Glycol Dehydrator must meet the following requirements:

1. To ensure that the non-condensable vapor compression system is fully integrated into dehydrator operation such that the units cannot be disabled so as to operate while venting to the atmosphere, each Closed-Loop Glycol Dehydrator must:
  - (a) incorporate an integral vapor recovery function that prevents the dehydrator from operating independently of the Vapor Recovery Unit (“VRU”);
  - (b) either return the captured vapors to the inlet of the facility where each glycol dehydrator is located or route the captured vapors to that facility’s fuel gas supply header; and
  - (c) thereby emit no more than 1.0 ton per year of VOCs.
2. Each Closed-Loop Glycol Dehydrator must have at least three (3) levels of protection to prevent emissions from occurring.
  - (a) As a first level of protection, physical electrical hard-wiring will exist between the VRU compressor(s) and the glycol circulation pumps to ensure that if the VRU compressor(s) shuts down, the glycol pump(s) also shuts down, thereby halting the circulation of glycol through the wet gas, as well as the emissions associated with the regeneration of glycol. More specifically:
    - i. Loss of station power interrupts the 480-volt power to the glycol pump(s) circulating glycol through the contactor.
    - ii. Loss of 24-volt power to a relay interrupts the 480-volt power to the glycol pump(s) circulating glycol through the contactor. The 24-volt power is wired in parallel through the run status contacts of each VRU compressor in a specific service. If all VRU compressors in each specific service are shutdown, the 24-volt power is interrupted. There must be at least one spare VRU compressor in standby mode for each specific service at existing facilities engaged in gas dehydration. Non-condensable gas from VRU compressor discharge always has an outlet because if the station inlet pressure rises to a level greater than VRU compressor output,

the flash tank vapors automatically go through a back pressure regulator to the fuel gas system until gathering pressure is reduced.

- iii. If the glycol still column/reboiler pressure rises above pressure set points, the 24-volt power to a relay is interrupted. The unpowered relay interrupts the 480-volt power to the glycol pump(s) circulating glycol to the contactor. If one of the glycol still VRU compressors is running but not compressing vapors, the pressure switch will detect the pressure rise in the still and shutdown the glycol circulating pump(s).
  - iv. The operation of at least one of the VRU compressors is required to complete the electrical circuit and allow one of the glycol circulation pumps to operate.
  - v. There is a 10-second time delay switch installed in the physical electrical circuit that must time out before the glycol circulating pump(s) shut down for causes (i) and (ii) above. This allows for switching of compressors and helps to prevent false shutdowns.
  - vi. All associated systems must be hard-wired and must not depend on any type of wireless controller.
- (b) As a second level of protection redundancy must be incorporated by utilizing the station Programmable Logic Controller (“PLC”) to shut down the dehydration system in the event the VRU compressor(s) go down.
- i. A PLC timer will start counting when none of the VRU compressor(s) are in operation. When the timer times out, the PLC will not allow the regenerator system to be in run status.
- (c) A third level of protection will exist by routing of non-condensable gases directly to combustion devices in the stations that utilize micro-turbine electrical generators or central heat medium systems.
- i. The non-condensable regenerator overhead vapors are routed to the inlet of each station or used as fuel.

WDJG’s adherence to these specifications shall satisfy its commitment in the Consent Decree to utilize Closed-Loop Glycol Dehydrator as more specifically described in Section VII of the Consent Decree.