11

ATTACHMENT 11

Buckeye Caribbean Terminals LLC
(Former Shell Chemical Yabucoa, Inc.)

Consent Decree
Civil Action No. 3:09-cv-1019

Quarterly Report:

Calendar Quarter ending March 31, 2011

I. Introduction

Pursuant to Paragraph 13 of the Consent Decree executed between the United States of America and Shell Chemical Yabucoa, Inc. ("Shell"), Civil Action No. 3:09-cv-1019, entered on May 11, 2009 ("Date of Entry") (hereinafter referred to as the "Consent Decree"), within 45 days after the end of each Calendar Quarter, from the Date of Entry until Termination of the Consent Decree, Shell is required to submit to the United States a status report regarding Shell's Compliance with Section V (Injunctive Relief) and the appendices to the Consent Decree (collectively, "Injunctive Provisions") during the preceding Calendar Quarter ("Quarterly Report"). All terms used in this Quarterly Report shall have the meaning given in the Consent Decree.

On December 10, 2010 Buckeye Caribbean Holdings Limited ("buckeye") completed the acquisition from Shell Caribbean Investments Limited ("Shell") of all outstanding shares of common voting stock of Shell Chemical Yabucoa Inc. With the closing of the transaction the entity changed its name to Buckeye Caribbean Terminals LLC ("BCT"). BCT from this date will assume the obligations under this consent order.

As further required by Paragraphs 13(a)-(d) of the Consent Decree, this Quarterly Report describes the following, as applicable to each Injunctive Provision:

(a) A description of the actions taken by Buckeye during the previous Calendar Quarter in order to meet the requirements of the injunctive provisions of the Consent Decree, including the date of completion for each action, and the Paragraph number and/or letter of the consent Decree obligation with which the action was intended to comply;
(b) A description of any impediments encountered by Buckeye in timely meeting the requirements of the injunctive provisions of the Consent Decree and the steps taken by Buckeye to overcome such impediments;
(c) The identification of the specific actions remaining to be accomplished in order to comply with the Injunctive Provisions of the Consent Decree, including citations to the

numbers and/or letters of Paragraphs requiring such actions, and the anticipated date on which each such action is expected to be accomplished; and

(d) A list of any penalties paid pursuant to Section VIII ("Stipulated Penalties"), including the identification (by number and/or letter) of each Paragraph of the Injunctive Provisions that was not complied with or was violated, and a breakdown of the penalty amount paid for violations of such Paragraph.

For ease of reference, the following discussion appears in the same order as drafted in the Consent Decree.

II. Injunctive Relief

BCT is required to initiate and perform the following activities by the dates set forth below:

a. Discharges from the 3-Cell API Unit Oil/Water Separator into the Flood Control Pond

- Injunctive Provision 8.a.i-iii: Pursuant to Paragraph 8.a.i, upon the Date of Entry of the Consent Decree, Shell is prohibited from discharging from the Facility's 3-Cell API Unit Oil/Water Separator into the Flood Control Pond, unless the event or events that caused the discharge or discharges are excused by the United States under Section IX (*Force Majeure*) of the Consent Decree.

Actions Taken: Flood Control Pond procedure prohibits discharges from the Facility's 3-Cell API Unit Oil/Water Separator into the Flood Control Pond (unless the discharge is excused) and such discharges have not occurred since the Date of Entry. As such, BCT has not been required to notify the EPA's Caribbean Environmental Protection Division of any such discharge event pursuant to Paragraph 8.a.ii and BCT has not been required to collect grab samples of any such discharge pursuant to Paragraph 8.a.iii.

Description of Impediments: No impediments have been encountered in meeting the requirements of this Injunctive Provision.

Specific Actions Remaining to be Accomplished: No actions remain to be accomplished to comply with this Injunctive Provision.

b. Rainfall Precipitation Collection, Measurement and Record Keeping

- Description of Injunctive Provision 8.b.i-iii: Pursuant to Paragraph 8.b.i, Shell is required to install and maintain a new rain gauge at a suitable location at the Facility. The rain gauge is to be installed in accordance with the manufacturer's installation recommendations and procedures, and placed into operation no later than 180 days after the Date of Entry of the Consent Decree. Pursuant to Paragraph 8.b.ii, no later than 210 days after the Date of Entry of the Consent Decree, Shell is required to develop and submit the Environmental Protection Agency ("EPA") and Environmental Quality Board ("EQB") a Standard Operation Procedure ("SOP") for rainfall data collection, management, and record keeping ("Rain Gauge SOP"). Pursuant to Paragraph 8.b.iii, until such time as Shell installs and places into operation the new rain gauge in accordance with Paragraphs 8.b.i & ii, Shell is required to operate, read and record precipitation data (including the date and duration of any precipitation event), and maintain the existing rain gauge.

Actions Taken to Comply with Injunctive Provision 8.b.i-iii: BCT continues operating and maintaining the new rain gauge and record keeping rainfall precipitation data.

Description of Impediments: No impediments have been encountered in meeting the requirements of this Injunctive Provision.

Specific Actions Remaining to be Accomplished: No actions remain to be accomplished to comply with this Injunctive Provision.

c. Inspection of the Outfall 001 Effluent Pipeline

- Injunctive Provision 8.c.i-iii: Pursuant to Paragraph 8.c.i, Shell is required to perform inspections of the Outfall 001 Effluent Pipeline, including but not limited to recording by videotape the external portion of the Outfall 001 Effluent Pipeline, at intervals of no less than 6 months for a total of 2 years. For purposes of this Injunctive Provision, Shell is not required to uncover any portions of the Outfall 001 Effluent Pipeline covered by sand or other debris. Pursuant to Paragraph 8.c.ii, Shell is required to prepare an inspection report and, pursuant to Subparagraph iii, submit to the EPA and EQB a copy of the inspection report no later than 60 days following the conclusion of the inspection.

  Actions Taken: In compliance with this Injunctive Provision, a copy of the inspection report was submitted to EPA and EQB on February 24, 2011 according to the requirement.

  Description of Impediments: No impediments have been encountered in meeting the requirements of this Injunctive Provision.

  Specific Actions Remaining to be Accomplished: BCT will perform subsequent inspections and prepare and submit inspection reports as required in the Consent Decree.

d. Contaminated Storm Water Runoff Storage Facility

- Injunctive Provision 8.d.i-v: Pursuant to Paragraph 8.d, in the event that Shell commences Startup of Operations, Shell is required to provide for temporary storage of at least 1.34 MGs of contaminated storm water runoff generated at the Facility to prevent discharges from the 3-Cell API Unit Oil/Water Separator into the Flood Control Pond. Shell is not required to implement the requirements of Subparagraphs 8.d during the period that the Petrochemical Production Facilities are not in operation.

Actions Taken: On October 15, 2010 Shell submitted a Title V Application revision to EQB in which Shell relinquished all permit coverage for all refinery process units, including their associated emissions units which were already permanently shutdown. BCT is not required to comply with these Injunctive Provisions since the refinery is permanently shutdown.

Description of Impediments: No impediments have been encountered in meeting the requirements of this Injunctive Provision.

Specific Actions Remaining to be Accomplished: No actions remain to be accomplished to fulfill this Injunctive Provision.

e. Standard Operating Procedures for the Storage Facility and the 3-Cell API Unit Oil/Water Separator

- Injunctive Provision 8.e.i-vi: Pursuant to Paragraph 8.e.i, Shell is required develop and implement all necessary Standard Operating Procedures ("SOPs") for the adequate operation and maintenance of the 3-Cell ("3-Cell SOP"), in accordance with Paragraph 8.e.ii, within 90 days after the Date of Entry of the Consent Decree. Pursuant to Paragraph 8.e.iii, Shell is required to submit to EPA a copy of the 3-Cell SOP no later than 120 days after the Date of Entry. Pursuant to Paragraph 8.e.iv, Shell is required to amend the 3-Cell SOP to include the operation and maintenance of the Storage Facility and comply with Subparagraph v, within 870 days after the Date of Entry ("3-Cell/Storage Facility SOP"). Finally, pursuant to Paragraph 8.e.vi, no later than 900 days after the date of entry Shell is required to submit to EPA a copy of the 3-Cell/Storage Facility SOP.

Actions Taken: No actions remain to be accomplished during this Calendar Quarter.

Description of Impediments: No impediments have been encountered in meeting the requirements of this Injunctive Provision.

Specific Actions Remaining to be Accomplished: No actions remain to be accomplished to fulfill this Injunctive Provision.

f. Selection, Implementation and Maintenance of Best Management Practices for the Facility's Storm Water Collection System and Associated Drainage Areas

- Injunctive Provision 8.f.i-iii: Pursuant to Paragraph 8.f.i, Shell is required to inspect the facility's Storm Water Collection Systems ("SWCS") including the East Uncontaminated Storm Water Channel ("East Channel") and the West Uncontaminated Storm Water Channel ("West Channel"), and develop a detailed Storm Sewer Drainage Map ("Drainage Map") within 150 days of the Date of Entry. Pursuant to Paragraph 8.f.ii, Shell is required to select and implement Best Management Practices ("BMPs") at the SWCS to reduce the amount of solids and sediments reaching the SWCS, and provide erosion controls, no later than 180 days after the Date of Entry. Finally, and pursuant to Paragraph 8.f.iii, Shell is required to amend the Facility's Storm Water Pollution Prevention Plan ("SWPPP") according to the requirements of Paragraphs 8.f.i and ii no later than 210 days after Date of Entry.

Actions Taken: On December 23, 2010 an EPA letter was received requesting more information in relation with the Engineering Analysis and Compliance Plan report submitted by Shell previously. The letter was answered by BCT on January 21, 2011 providing all information requested by EPA. On January 27, 2011 EPA issued a letter approving the compliance plan.

Description of Impediments: No impediments have been encountered in meeting the requirements of this Injunctive Provision.

Specific Actions Remaining to be Accomplished: Answer EPA letter, received on December 23, 2010. BCT will continue taking measures to maintain the installed systems and implement the BMPs.

g. Maintenance, Inspection and Operation of the Flood Control Pond

- Injunctive Provision 8.g.i: Pursuant to Injunctive Provision 8.g, Shell is required to bring the flood control pond ("FCP") to its original design dimensions and storage capacity. Shell is required to determine the FCP original design dimensions and storage capacity by reviewing applicable records maintained by Shell and, if required, by performing additional engineering studies. Shell is also required to sample the material to be excavated at the northeast, middle and northwest areas of the FCP and analyze the samples for hazardous waste characteristics (full Resource Conservation and Recovery Act ("RCRA") sampling and analysis) applicable to the facility in accordance with 40 C.F.R. part 261, subpart C. Based upon the analytical results, Shell is required collect and dispose of the excavated material in accordance with applicable local, Commonwealth and federal laws and regulations.

The schedule for executing this Injunctive Provision are set forth in Appendix III to the Consent Decree, and require that Shell: (1) submit to Environmental Quality Board, the Puerto Rico Department of Natural and Environmental Resources, and all necessary local, state and federal agencies the environmental document and permit applications required for maintenance of the FCP no later than 150 days of the Date of Entry, (2) obtain approval or conditional approval of the environmental document and permits, and submit a copy of the approval document(s) to EPA no later than 330 days from the Date of Entry, (3) commence maintenance activities (including full RCRA sampling and Analysis) in accordance with the original design dimensions and storage capacity no later than 390 days from the Date of Entry, (4) complete FCP maintenance activities no later than 570 days from the Date of Entry, and (5) notify EPA and EQB that all FCP maintenance activities have been completed within 600 days from the Date of Entry.

Actions Taken: No actions were taken during this Calendar Quarter since Injunctive Provisions 8.g.i was satisfied during the previous Calendar Quarters. On June 24, 2010, EPA issued a letter notifying that Shell has satisfactorily completed the maintenance of the Flood Control Pond.

Description of Impediments: No impediments have been encountered in meeting the requirements of this Injunctive Provision.

Specific Actions Remaining to be Accomplished: No actions remain to be accomplished to comply with this Injunctive Provision.

- Injunctive Provision 8.g.ii & iii: Pursuant to Injunctive Provision 8.g.ii, Shell is required to modify, operate and maintain the existing Outfall 002 Pump System and related appurtenances ("Pump System") no later than 320 days after the Date of Entry. Additionally, pursuant to Injunctive Provision 8.g.iii, Shell is required to notify the EPA that it has modified and initiated operation of the Pump System.

Actions Taken: No actions were taken during this Calendar Quarter since Injunctive Provisions 8.g.ii & iii were satisfied during the previous Calendar Quarters.

Description of Impediments: No impediments have been encountered in meeting the requirements of this Injunctive Provision.

Specific Actions Remaining to be Accomplished: No actions remain to be accomplished to comply with Injunctive Provisions 8.g.ii and 8.g.iii.

- Injunctive Provision 8.g.iv & v: Pursuant to Injunctive Provisions 8.g.iv & v, Shell is required to develop and implement a routine Dissolved Oxygen ("DO") sampling program ("DO Sampling Program") to adequately monitor the fluctuations of DO concentrations in the FCP no later than 60 days after the Date of Entry and submit a copy of the DO Sampling Program to EPA no later than 90 days after the Date of Entry.

Actions Taken: No actions were taken during this Calendar Quarter since Injunctive Provisions 8.g.iv & v were satisfied during the previous Calendar Quarters. BCT continues implementing the DO Sampling Program submitted to EPA.

Description of Impediments: No impediments have been encountered in meeting the requirements of these Injunctive Provisions 8.g.iv & v.

Specific Actions Remaining to be Accomplished: No actions remain to be accomplished to comply with these Injunctive Provisions 8.g.iv & v.

- Injunctive Provision 8.g.vi-ix: Pursuant to Injunctive Provisions 8.g.vi-ix, Shell is required to develop a standard operating procedure for the adequate operation, routine inspection and maintenance of the FCP ("FCP SOP") and incorporate the FCP SOP into the SWPPP no later than 180 days after date of Entry, submit a copy of the FCP SOP to EPA no later than 180 days after the Date of Entry, and implement the FCP SOP no later than 630 days after the Date of Entry.

Actions Taken: No actions were taken during this Calendar Quarter since Injunctive Provisions 8.g.vi-ix were satisfied during the previous Calendar Quarters. BCT continues implementing the FCP SOP submitted to EPA.

Description of Impediments: No impediments have been encountered in meeting the requirements of this Injunctive Provision.

Specific Actions Remaining to be Accomplished: No actions remain to be accomplished to comply with these Injunctive Provisions 8.g.vi-ix

h. Hydrology Study of the Flood Control Pond and the Facility's Uncontaminated Storm Water Drainage Areas West of Quebrada Lajas

- Injunctive Provision 8.h.i & ii: Pursuant to Paragraph 8.h.i, Shell is required to conduct a storm water runoff hydrology study ("Hydrology Study") covering all areas of the Facility from which uncontaminated storm water runoff is discharged or may be discharged into the FCP, to determine the quantity of storm water that may reach the FCP no later than 150 days after the Date of Entry. Pursuant to Paragraph 8.h.ii, Shell is required to submit a detailed report of the Hydrology Study no later than 180 days after the Date of Entry.

Actions Taken: On Januaray 25, 2011 an EPA letter was received requesting more information in relation with the Hydrology Study submitted by Shell previously. The letter was answered by BCT on February 25, 2011 providing all information requested by EPA.

Description of Impediments: No impediments have been encountered in meeting the requirements of this Injunctive Provision.

Specific Actions Remaining to be Accomplished: No actions remain to be accomplished to comply with this Injunctive Provision.

i. Regarding Engineering Analysis and Compliance Plan for Total Suspended Solids and Dissolved Oxygen

- Injunctive Provision 8.i.i-iv: Pursuant to Injunctive Provision 8.i.i, Shell is required to conduct an engineering analysis of measures to bring the discharges of Total Suspended Solids ("TSS") and DO through Outfall 002 into compliance with the Permit effluent limitations for those pollutants ("Engineering Analysis") no later than 180 days after the Date of Entry. Pursuant to Injunctive Provision 8.i.ii, Shell is required to submit to EPA a report consistent with Injunctive Provision 8.i.ii no later than 210 days after the Date of Entry. Pursuant to Injunctive Provision 8.i.iv, Shell is required to notify EPA that the Compliance Plan measures have been implemented within 60 days after the implementation of the measures set forth in the Compliance Plan.

Actions Taken: On January 27, 2011 EPA issued a letter approving the compliance plan. Vegetative cover in the former scaffolding area continues growing and is almost complete.

Description of Impediments: No impediments have been encountered in meeting the requirements of this Injunctive Provision.

Specific Actions Remaining to be Accomplished: Pending completion of vegetative cover in the former scaffolding area.

III. Penalties

Pursuant to Paragraph 13.d of the Consent Decree, Shell is required to list any penalties paid pursuant to Section VII ("Stipulated Penalties"), including the identification of each Paragraph of the Injunctive Provision that was not complied with or was violated, the number of days each such Section and Paragraph was not complied with or was violated, and a breakdown of the penalty amount paid for violations of each such Paragraph.

BCT has not been required to pay any Stipulated Penalties.

ATTACHMENT 12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Plaintiff, v. SHELL CHEMICAL YABUCOA, INC., Defendant.	)	CIVIL ACTION NO. 3:09-cv-1019

CONSENT DECREE

TABLE OF CONTENTS

I. BACKGROUND ..... -1-

II. JURISDICTION AND VENUE ..... -3-

III. APPLICABILITY ..... -4-

IV. DEFINITIONS ..... -5-

V. INJUNCTIVE RELIEF ..... -9-

VI. CIVIL PENALTY ..... -20-

VII. OVERSIGHT, REPORTING AND CERTIFICATIONS ..... -21-

VIII. STIPULATED PENALTIES ..... -26-

IX. FORCE MAJEURE ..... -32-

X. DISPUTE RESOLUTION ..... -35-

XI. NOTICES ..... -37-

XII. INFORMATION COLLECTION AND RECORD RETENTION ..... -39-

XIII. COMPLIANCE WITH APPLICABLE LAWS ..... -43-

XIV. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS ..... -43-

XV. COSTS ..... -45-

XVI. PUBLIC PARTICIPATION ..... -46-

XVII. MODIFICATION ..... -46-

XVIII. RETENTION OF JURISDICTION ..... -47-

XIX. EFFECTIVE DATE ..... -47-

XX. TERMINATION ..... -47-

XXI. SIGNATORIES AND SERVICE ..... -49-

XXII. INTEGRATION ..... -50-

XXIII. FINAL JUDGMENT ..... -50-

APPENDIX I: Schedule for Design, Permitting, Endorsement and Construction Activities for the Contaminated Storm Water Storage Facility

APPENDIX II: Shell Chemical Yabucoa, Inc. Facility Drainage Diagram

APPENDIX III: Schedule for Maintenance of the Flood Control Pond

I. BACKGROUND

WHEREAS, Plaintiff, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), is filing concurrently with the lodging of this Consent Decree, a Complaint ("Complaint") against Defendant Shell Chemical Yabucoa, Inc. ("Shell"), alleging violations of Sections 301 and 402 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311 and 1342, respectively, and regulations promulgated thereunder, and terms and conditions of National Pollutant Discharge Elimination System ("NPDES") Permit Number PR0000400 ("Permit"), issued by EPA to Shell, pursuant to Section 402 of the CWA, and seeking civil penalties and injunctive relief;

WHEREAS, Shell is a corporation duly organized under the laws of the Commonwealth of Puerto Rico, with its principal office located at State Road 901, Km. 2.7, Camino Nuevo Ward, Yabucoa, Puerto Rico 00767;

WHEREAS, Shell owns and operates a petrochemical facility located at State Road 901, Km. 2.7, Camino Nuevo Ward, Yabucoa, Puerto Rico 00767 ("Facility"), which is addressed in the Complaint and in this Consent Decree;

WHEREAS, the United States alleges that Shell has, during the relevant time period, violated Sections 301(a) and 402 of the CWA, when Shell discharged pollutants in excess of the effluent limitations contained in the Permit, failed to report certain discharges of pollutants in excess of the effluent limitations contained in the Permit, discharged treated process wastewater containing pollutants at unpermitted discharge points into Quebrada Santiago and Mar Caribe, failed to comply timely with certain Permit requirements (monitoring and performance of studies) pertaining to the discharge of treated process wastewater through a permitted deep

seawater pipeline, lacked adequate operation and maintenance of the deep seawater pipeline and related appurtenances (such as the diffuser), experienced unauthorized discharges of partially treated contaminated storm water from the 3-Cell API Unit Oil/Water Separator into the Flood Control Pond and discharged at least some of the partially treated contaminated storm water from those discharges through an unauthorized discharge point, and the United States further states that the Complaint alleges claims upon which relief may be granted under Sections 301(a), 309, and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1319, and 1342, respectively;

WHEREAS, the United States and Shell agreed to engage in settlement discussions to attempt to resolve the United States' claims prior to litigation;

WHEREAS, Shell performed certain actions to address several alleged violations of the CWA and the Permit, including repairing the rupture in the deep seawater pipeline in Mar Caribe, repairing the rupture in the discharge pipeline at Quebrada Santiago, a tributary of Mar Caribe, and promptly after receiving EPA's notice to proceed initiating and performing certain monitoring activities and studies required by the Permit;

WHEREAS, on or about May 16, 2008, Shell publicly announced that it would cease operation of its Petrochemical Production Facilities in July 2008 and continue with its supply operations;

WHEREAS, on or about July 17, 2008, Shell ceased operation of its Petrochemical Production Facilities;

WHEREAS, the Parties agree that it is desirable to resolve the claims for civil penalties and injunctive relief asserted in the Complaint without further litigation;

WHEREAS, this Consent Decree ("Consent Decree" or "Decree") is entered into

between the United States and Shell for the purpose of settlement and does not constitute an admission by Shell of any fact or evidence of same, conclusion of law, or of any violation of federal or Commonwealth law, regulation or permit;

WHEREAS, the Parties recognize, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid further litigation between the Parties related to the claims alleged in the Complaint, and that the settlement embodied by this Consent Decree is fair, reasonable, and in the public interest;

WHEREAS, this Consent Decree supercedes the Administrative Order on Consent, CWA-02-2002-3015, executed by Shell and EPA and letters from EPA to Shell, dated May 13, 2005, January 10, 2006, and September 27, 2006, which in effect modified the Administrative Order on Consent (CWA-02-2002-3015).

NOW, THEREFORE, without admission by Shell of the non-jurisdictional allegations, facts, or conclusions of law in the Complaint, and upon consent of the United States and Shell, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of and over the parties to this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 and Section 309 of the CWA, 33 U.S.C. § 1319. Venue lies in this District pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and 28 U.S.C. §§ 1391(b)-(c) and 1395(a), because Shell is located in this judicial district, and because the violations set forth in the Complaint are alleged to have occurred in, and Shell conducts business in, this judicial district. For purposes of this Consent Decree, or any action to

enforce this Consent Decree, Shell consents to the Court's jurisdiction over this Consent Decree or such action and over Shell, and consents to venue in this judicial district.

III. APPLICABILITY

2. The provisions of this Consent Decree shall apply to, inure to the benefit of, and be binding upon the United States, on behalf of EPA, and Shell, its officers, directors, employees, and any successors in interest, assigns, or other entities or persons otherwise bound by law.

3. No transfer of any ownership interest in the Facility or any interest in the operation of the Facility, whether in compliance with this Paragraph or otherwise, shall relieve Shell of its obligation to ensure that the terms of this Consent Decree are implemented. Any transfer involving ownership or operation of the Facility, or any portion thereof, to any other person or entity must be conditioned upon the transferee's agreement to undertake the obligations required by all provisions of this Consent Decree applicable to the Facility, as provided in a written agreement between Shell and the proposed transferee, enforceable by the United States as third-party beneficiary of such agreement. At least thirty (30) days prior to such transfer, Shell shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the above-referenced proposed written agreement, to EPA Region 2, the United States Attorney for the District of Puerto Rico, and the United States Department of Justice, in accordance with Section XI (Notices). Any noncompliance with this Paragraph constitutes a violation of this Consent Decree.

4. Shell shall provide a copy of this Consent Decree to all officers, employees, and

agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Shell shall specify in any such contract that performance of the work must be done in conformity with the terms of this Consent Decree.

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

6. Any action taken by any engineering firm, contractor or consultant to implement Shell's duties under this Consent Decree shall be considered an action of Shell for purposes of determining compliance with this Consent Decree.

IV. DEFINITIONS

7. Unless otherwise defined herein, the terms used in this Consent Decree will have the meaning given to those terms in the CWA, 33 U.S.C. §§ 1251 *et seq.*, and the regulations promulgated thereunder. The following terms, as used in this Consent Decree and for purposes of this Consent Decree only, will be defined as follows:

a. "3-Cell API Unit Oil/Water Separator" or "3-Cell" shall mean the Facility's 3-Cell oil/water separator unit used by Shell to partially treat contaminated storm water runoff.

b. "Act" or "CWA" shall mean the Clean Water Act, 33 U.S.C. §§ 1251-1387.

c. "Calendar Quarter" shall mean the three-month periods ending on March 31, June 30, September 30, and December 31.

d. "Commonwealth" shall mean the Commonwealth of Puerto Rico.

e. "Complaint" shall mean the Complaint filed by the United States in this action captioned *United States v. Shell Chemical Yabucoa, Inc.*

f. "Consent Decree" or "Decree" shall mean this Consent Decree, and any modifications made hereto, including the Appendices attached hereto and the Compliance Plan approved or conditionally approved by EPA pursuant to Subparagraph 8.i of this Consent Decree.

g. "Contaminated Storm Water Runoff Storage Facility" or "Storage Facility" shall mean the system by which Shell shall provide for the temporary storage of contaminated storm water runoff generated at the Facility, and shall include: (1) above ground storage tank(s) capable of temporarily storing no less than 1.34 million gallons ("MGs") of contaminated storm water runoff generated at the Facility; (2) installation of sump pump(s) at the influent chamber of the 3-Cell; (3) a piping connection from the new sump pump(s) to the existing 3-Cell sump pumps located at the effluent chamber, to provide backup pumping capability; (4) a 12-inch diameter carbon steel pipe providing an above ground connection from the new sump pump(s) to the above ground storage tank(s); (5) a 12-inch diameter carbon steel pipe providing an underground connection from the above ground storage tank(s) to return the stored contaminated storm water to the 3-Cell for further treatment; and (6) any related appurtenances.

h. "Date of Lodging" or "Lodging Date" shall mean the date on which this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Puerto Rico.

i. "Date of Entry" or "Entry Date" shall mean the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

j. "Day" or "Days" as used herein shall mean a calendar day or days. References to "business days" shall mean days of the week other than Saturdays, Sundays, and holidays. In computing any period of time under this Consent Decree, if the last day would fall on a Saturday, Sunday or federal or Commonwealth holiday, the period shall continue until the next day other than a Saturday, Sunday, or holiday.

k. "Defendant" or "Shell" shall mean Shell Chemical Yabucoa, Inc.

l. "DOJ" shall mean the United States Department of Justice and any successor departments or agencies of the United States.

m. "Effective Date" shall have the definition provided in Section XIX (Effective Date).

n. "EPA" shall mean the United States Environmental Protection Agency and

any successor departments or agencies of the United States.

o. "EQB" or "Environmental Quality Board" shall mean the Environmental Quality Board of the Commonwealth of Puerto Rico and any successor departments or agencies of the Commonwealth of Puerto Rico.

p. "Facility" shall refer to the Shell petrochemical facility located at State Road 901, Km. 2.7, Camino Nuevo Ward, Yabucoa, Puerto Rico 00767.

q. "Flood Control Pond" or "FCP" shall mean the above ground unlined

storage pond used by Shell to receive and store uncontaminated storm water runoff to be later treated at the Facility wastewater treatment plant or discharged through Outfall 002.

r. "Mothballed" shall mean the current state of preservation of the Facility's Petrochemical Production Facilities, where those facilities are not engaged in the manufacture, production, or storage of petroleum products and all wastewater generated at the Facility is being treated in the Facility wastewater treatment plant and discharged through Outfall 001.

s. "NPDES Permit" or "Permit" as used herein shall mean the National Pollutant Discharge Elimination System Permit issued to Shell for the Facility (Permit Number PR0000400).

t. "Outfall 001" and "Outfall 002" refer to the outfalls identified as Outfalls 001 and 002, respectively, in the Permit.

u. "Outfall 001 Effluent Pipeline" shall mean that portion of the pipeline leading to Outfall 001, from the Santiago Creek bed to the end of the pipeline including the diffuser system.

v. "Party" or "Parties" shall mean the United States and Shell Chemical Yabucoa, Inc.

w. "Petrochemical Production Facilities" shall mean the facilities at the Facility except the administrative offices and buildings, the tank farm, the loading dock, and the truck loading rack.

x. "Quebrada Santiago" and "Mar Caribe" are navigable waters of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

y. "Section" shall mean a portion of this Consent Decree identified by a

Roman numeral, unless otherwise provided.

z. "Startup Date" shall mean the date on which Shell commences Startup of Operations.

aa. "Startup of Operations" or "Startup" shall mean the commencement of petrochemical production operations or any other operations, regardless of type or scale, at the Facility's Petrochemical Production Facilities.

bb. "Submit," in regard to documents required to be submitted pursuant to this Consent Decree, shall mean the date the document is placed in the express mail, certified U.S. Postal Service mail, and/or express courier service, or the date the document is transmitted by facsimile or electronic mail, unless otherwise specifically stated.

cc. "United States" shall mean the United States of America, acting on behalf of EPA.

V. INJUNCTIVE RELIEF

8. Shell shall initiate and perform the following activities by the dates set forth below:

a. *Discharges from the 3-Cell API Unit Oil/Water Separator into the Flood Control Pond*

i. Upon the Date of Entry of this Consent Decree, any discharge from the Facility's 3-Cell API Unit Oil/Water Separator into the Facility's Flood Control Pond is prohibited, unless the event or events that caused the discharge or discharges are excused by the United States under Section IX (Force Majeure).

ii. Shell shall notify EPA's Caribbean Environmental Protection Division orally at (787) 977-5870 or by facsimile at (787) 289-7982 within twenty-four (24)

hours of knowledge of a discharge event. In addition, Shell shall submit a detailed written report to EPA and EQB within five (5) days of the time that Shell obtained knowledge of a discharge event. The written report shall contain a description of the circumstances which caused the discharge(s), the person(s) who obtained knowledge and managed the event, the exact dates and times (beginning and end of the discharge event), whether the discharge ceased or when it is expected to cease, and the steps to be taken to prevent recurrence (e.g., modification of the Standard Operating Procedures).

iii. For data gathering purposes only, Shell shall collect grab samples of the discharge within the first thirty (30) minutes at the 3-Cell effluent chamber for all the parameters listed in Part I, Table A-1 of the Permit. The samples shall be collected and analyzed in accordance with 40 C.F.R. Part 136. In accordance with Part I.B.2 of the Permit, Shell shall include the analytical results of the grab samples in the Discharge Monitoring Report for the applicable monitoring period.

b. *Rainfall Precipitation Collection, Measurement and Record Keeping*

i. Shell shall install and maintain a new rain gauge at a suitable location at the Facility. The rain gauge shall be installed in accordance with the manufacturer's installation recommendations and procedures, and placed into operation no later than one hundred eighty (180) days after the Date of Entry of this Consent Decree.

ii. No later than two hundred ten (210) days after the Date of Entry of this Consent Decree, Shell shall develop and submit to EPA and EQB a Standard Operating Procedure ("SOP") for rainfall data collection, management, and record-keeping ("Rain Gauge SOP"). The Rain Gauge SOP shall address, at a minimum, procedures for adequate operation,

maintenance and calibration (per manufacturer's recommendation) of the rain gauge, description of precipitation data collection (e.g., 5 minute intervals) and management procedures (e.g., person(s) authorized to read and record data), and record-keeping and reporting requirements. The log shall be prepared monthly and shall include the certification language and authorized signature in accordance with Section VII (Oversight, Reporting and Certifications).

iii. Until such time as Shell installs and places into operation the new rain gauge in accordance with Subparagraph 8.b.i-ii, above, Shell shall operate, read and record precipitation data (including the date and duration of any precipitation event), and maintain the existing rain gauge. Shell may opt to keep in operation the existing rain gauge for backup or other purposes, following the installation of the new rain gauge.

c. *Inspection of the Outfall 001 Effluent Pipeline*

i. Commencing in calendar year 2008 and occurring each calendar year thereafter, at intervals of no less than six (6) months for a total of 2 years, Shell shall perform inspections of the Outfall 001 Effluent Pipeline, including but not limited to recording by videotape the external portion of the Outfall 001 Effluent Pipeline. For purposes of this Subparagraph, Shell shall not be required to uncover any portions of the Outfall 001 Effluent Pipeline covered by sand or other debris.

ii. Shell shall prepare an inspection report detailing the results of the inspection. The report shall contain at a minimum the following: date, time, name of the person(s) who conducted the inspection, brief description of the weather conditions (including in Mar Caribe), copy of videotape, and findings and recommendations (e.g., repairs, unclogging of ports, leakage).

iii. Shell shall submit a copy of the inspection report to EPA and EQB no later than sixty (60) days following the conclusion of the inspection.

d. *Contaminated Storm Water Runoff Storage Facility*

i. In the event that Shell commences Startup of Operations, Shell shall provide for temporary storage of at least 1.34 MGs of contaminated storm water runoff generated at the Facility to prevent discharges from the 3-Cell API Unit Oil/Water Separator into the Flood Control Pond. Shell shall not be required to implement the requirements of this Subparagraphs 8.d nor Subparagraphs 8.e.iv-vi, below, during the period that the Petrochemical Production Facilities are Mothballed.

ii. No later than thirty (30) days prior to Startup of Operations, Shell shall submit to the United States a written notification of Startup and the anticipated Startup Date, and provide a detailed description of the anticipated operations, including production materials and scope of production. No later than fifteen (15) days after Startup, Shell shall submit written confirmation to the United States of the Startup Date.

iii. In accordance with the schedule set forth in Appendix I to this Consent Decree, Shell shall design, install, construct and operate facilities, structures, pipelines, pumps, equipment and utilities necessary to commence operation of the Storage Facility. The Storage Facility and associated infrastructure shall be designed, constructed and installed in accordance with best management, engineering and safety practices and all plans, specifications, permits and schedules prepared hereunder.

iv. Shell shall achieve satisfactory completion of the Storage Facility in accordance with the requirements of this Consent Decree. "Satisfactory Completion" shall

mean:

(1) designing and constructing the Storage Facility in accordance with the requirements and schedule set forth in Appendix I to this Consent Decree, including any modifications thereof;

(2) ensuring that such design and construction are performed in accordance with all applicable federal, Commonwealth and local statutes, regulations, standards, permits, ordinances and other requirements; and

(3) timely and fully completing all other work required under this Section and Appendix I to this Consent Decree, including work described in any plans, specifications, permits and schedules prepared thereunder, and any modifications thereof.

v. Shell may contract with one or more contractor(s) for design, permitting, construction and inspection of the Storage Facility, as provided herein, but Shell shall remain responsible under this Consent Decree for the satisfactory completion of the Storage Facility.

e. *Standard Operating Procedures for the Storage Facility and the 3-Cell API Unit Oil/Water Separator*

i. No later than ninety (90) days after the Date of Entry of this Consent Decree, Shell shall develop and implement all necessary Standard Operating Procedures ("SOPs") for the adequate operation and maintenance of the 3-Cell ("3-Cell SOP").

ii. The 3-Cell SOP shall include:

(1) operation and maintenance (such as adequate flow and velocity, removal and treatment of sludge, and preventative maintenance);

(2) use of precipitation data and Rain Gauge SOP;

(3) activation, operation and maintenance of the three existing sump pumps located at the effluent chamber of the 3-Cell;

(4) decision-making process for discharges into the FCP;

(5) transfer from the 3-Cell to the Facility's equalization tanks;

(6) operation of the Facility's equalization tanks; and

(7) any other practices and protocols deemed necessary for the appropriate operation of the 3-Cell and prevention of discharges from the 3-Cell to the FCP.

iii. No later than one hundred twenty (120) days after the Date of Entry of this Consent Decree, Shell shall submit to EPA a copy of the 3-Cell SOP.

iv. No later than eight hundred seventy (870) days after the Date of Entry of this Consent Decree, Shell shall amend the 3-Cell SOP to include the operation and maintenance of the Storage Facility ("3-Cell/Storage Facility SOP").

v. The 3-Cell/Storage Facility SOP shall comply with Subparagraph 8.e.ii, above, and shall include practices and protocols for the adequate operation and maintenance of the Storage Facility, including activation, operation and maintenance of the new sump pump(s), above ground storage tank(s), and the storm sewer system used by Shell to collect and discharge contaminated storm water runoff into the 3-Cell.

vi. No later than nine hundred (900) days after the Date of Entry of this Consent Decree, Shell shall submit to EPA a copy of the 3-Cell/Storage Facility SOP.

f. *Selection, Implementation and Maintenance of Best Management Practices for the Facility's Storm Water Collection Systems and Associated Drainage Areas*

i. No later than one hundred fifty (150) days after the Date of Entry

of this Consent Decree, Shell shall inspect the Facility's Storm Water Collection Systems ("SWCS") including the East Uncontaminated Storm Water Channel ("East Channel") and the West Uncontaminated Storm Water Channel ("West Channel"), and develop a detailed Storm Sewer Drainage Map ("Drainage Map"). The Drainage Map shall identify all discernible, confined and discrete conveyances (e.g., pipe, ditch, channel, gutter, culvert) and associated drainage areas of the East Channel and West Channel.

ii. No later than one hundred eighty (180) days after the Date of Entry of this Consent Decree, Shell shall select and implement Best Management Practices ("BMPs") at the SWCS (e.g., regular sweeping of paved areas) to reduce the amount of solids and sediments reaching the SWCS and FCP. At a minimum, Shell shall clean the SWCS, install sediment traps throughout the SWCS, and provide erosion controls (e.g., crushed stone) at the scaffold storage area located to the west of the Facility's intermediate tank storage area and the open land areas located between the Facility's Contractor Building and Fire School, as identified in the Facility diagram attached hereto in Appendix II.

iii. No later than two hundred ten (210) days after the Date of Entry of this Consent Decree, Shell shall amend the Facility's Storm Water Pollution Prevention Plan ("SWPPP"), certified and signed by Shell on October 11, 2007, according to the requirements in Subparagraphs 8.f.i-ii, above, and shall incorporate, at a minimum, the Drainage Map, detailed descriptions of the BMPs, and schedule(s) for routine review, inspection, replacement and/or repair of the BMPs, as appropriate. The amended SWPPP shall be signed and certified in accordance with Section VII (Oversight, Reporting and Certifications), and Shell shall submit a copy of the amended SWPPP to EPA and EQB.

g. *Maintenance, Inspection and Operation of the Flood Control Pond*

Maintenance of the Flood Control Pond

i. In accordance with the schedule set forth in Appendix III to this Consent Decree, Shell shall bring the FCP to its original design dimensions and storage capacity. Shell shall determine the FCP original design dimensions and storage capacity by reviewing applicable records maintained by Shell and, if required, by performing additional engineering studies. As part of the FCP maintenance, Shell shall sample the material to be excavated at the northeast, middle and northwest areas of the FCP. In accordance with 40 C.F.R. Part 261 subpart C, the samples shall be analyzed for hazardous waste characteristics (full Resource Conservation and Recovery Act ("RCRA") sampling and analysis) applicable to the Facility. Based upon the analytical results, Shell shall collect and dispose of the excavated material in accordance with applicable local, Commonwealth and federal laws and regulations.

Outfall 002 Pump System

ii. No later than three hundred twenty (320) days after the Date of Entry of this Consent Decree, Shell shall modify, operate and maintain the existing Outfall 002 Pump System and related appurtenances ("Pump System"). The Pump System shall draw the storm water at a suitable water column location to minimize turbulence and resuspension of sediments in the FCP. If feasible, Shell shall install, operate and maintain a vortex breaker-type strainer at the suction area to reduce the turbulence and eddy currents caused by the operation of the Pump System.

iii. No later than three hundred fifty (350) days after the Date of Entry of this Consent Decree, Shell shall notify EPA in writing that Shell has modified and initiated

operation of the Pump System.

Dissolved Oxygen Sampling Program

iv. No later than sixty (60) days after the Date of Entry of this Consent Decree, Shell shall develop and implement a routine Dissolved Oxygen ("DO") sampling program ("DO Sampling Program") to adequately monitor the fluctuations of DO concentrations in the FCP.

v. No later than ninety (90) days after the Date of Entry of this Consent Decree, Shell shall submit a copy of the DO Sampling Program to EPA.

Flood Control Pond Standard Operating Procedure

vi. No later than one hundred eighty (180) days after the Date of Entry of this Consent Decree, Shell shall develop a standard operating procedure for the adequate operation, routine inspection and maintenance of the FCP ("FCP SOP"). The FCP SOP shall include at a minimum: (1) operation, routine inspection and maintenance (e.g., FCP storage capacity reduced by 40%); (2) activation, operation and maintenance of the Pump System; (3) decision-making process for discharges through Outfall 002; (4) sampling protocol and adequate disposal of sediments and materials removed from the FCP during maintenance activities; and (5) any other practices and protocols deemed necessary for the appropriate operation of the FCP, and prevention of resuspension of sediments and solids and low concentration levels of DO in the FCP.

vii. No later than one hundred eighty (180) days after the Date of Entry of this Consent Decree, Shell shall incorporate the FCP SOP into the SWPPP.

viii. No later than two hundred ten (210) days after the Date of Entry of

this Consent Decree, Shell shall submit a copy of the FCP SOP to EPA.

ix. No later than six hundred thirty (630) days after the Date of Entry of this Consent Decree, Shell shall implement the FCP SOP.

h. *Hydrology Study of the Flood Control Pond and the Facility's Uncontaminated Storm Water Drainage Areas West of Quebrada Lajas*

i. No later than one hundred fifty (150) days after the Date of Entry of this Consent Decree, Shell shall conduct a storm water runoff hydrology study ("Hydrology Study") covering all areas of the Facility from which uncontaminated storm water runoff is discharged or may be discharged into the FCP, to determine the quantity of storm water that may reach the FCP. The Hydrology Study shall be based on Shell's Storm Water Data Evaluation Report, dated December 2006, for 24-hour storm events with a return period of 10 years and 25 years.

ii. No later than one hundred eighty (180) days after the Date of Entry of this Consent Decree, Shell shall submit to EPA a detailed report of the Hydrology Study, which shall include but need not be limited to:

(1) Drainage Map and FCP drawing, including the FCP design geometry (e.g., length, width, depth);

(2) FCP design storage capacity;

(3) Drainage areas and quantity of storm water discharge from the East Channel and West Channel into the FCP for 24-hour storm events with a return period of 10 years and 25 years;

(4) Storage capacity of the FCP, where the surface water level is located just below the invert elevation of the East Channel discharge point into the FCP;

(5) Storage capacity of the FCP surface, where the surface water level is located just below the invert elevation of the West Channel discharge point into the FCP;

(6) Quantity of the contaminated storm water discharges from the 3-Cell into the FCP during 24-hour storm events with a return period of 25 years, prior to operation of the Storage Facility and after operation of the Storage Facility;

(7) Calculation of the 24-hour storm event which will trigger the discharge of storm water from the FCP through Outfall 002; and

(8) Quantity of storm water in excess of the FCP design storage capacity for a 24-hour storm event with a return period of 25 years.

i. *Engineering Analysis and Compliance Plan for Total Suspended Solids and Dissolved Oxygen*

i. No later than one hundred eighty (180) days after the Date of Entry of this Consent Decree, Shell shall conduct an engineering analysis of measures (e.g., BMPs, storm water storage, groundwater recharge, treatment technologies) to bring the discharges of Total Suspended Solids ("TSS") and DO through Outfall 002 into compliance with the Permit effluent limitations for those pollutants ("Engineering Analysis").

ii. No later than two hundred ten (210) days after the Date of Entry of this Consent Decree, Shell shall submit to EPA for approval a report containing:

(1) a discussion of the measures evaluated to bring discharges of TSS and DO through Outfall 002 into compliance with the Permit and the associated costs, and the findings and recommendations of the Engineering Analysis; and

(2) a Compliance Plan ("Compliance Plan") that includes (a)

measures to be implemented based on the findings and recommendations of the Engineering Analysis; and (b) a schedule for implementing those measures, which shall not exceed seven hundred thirty (730) days from the date EPA approves the Compliance Plan. If requested by Shell, EPA will provide comments and offer guidance while Shell develops this report.

iii. Upon approval or conditional approval by EPA, the Compliance Plan shall be incorporated by reference into this Consent Decree and shall be enforceable as a part hereof.

iv. Within sixty (60) days after the implementation of the measures set forth in the Compliance Plan, Shell shall notify EPA in writing that the measures in the Compliance Plan have been implemented.

VI. CIVIL PENALTY

9. Within thirty (30) days of the Date of Entry of this Consent Decree, Shell shall pay a civil penalty in the amount of $1,025,000, plus accrued interest calculated at a rate of 4% per year on the amount of $725,000 from February 28, 2008 through the date of payment, to the United States for violations of the CWA and Permit, as alleged in the Complaint. Notwithstanding any other requirements of this Section, if the civil penalty payment is not made on or before October 31, 2008, Shell shall pay interest accrued on the remaining principal amount of $300,000 from October 31, 2008 until the date of payment at a rate of 4% per year.

10. Payment of the civil penalty, and interest thereon, shall be made by FedWire Electronic Funds Transfer ("EFT" or "wire transfer") to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing the name, caption, Civil Action Number, U.S.A.O. file number, EPA Region 2, and DOJ case number 90-5-1-1-

08400. Payment shall be made in accordance with instructions provided to Shell, following lodging of the Consent Decree, by the Financial Litigation Unit of the United States Attorney's Office for the District of Puerto Rico. Any payment received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Shell shall send notice that such payment has been made to the United States as specified in Section XI (Notices), by email to acctsreceivable.CINWD@epa.gov, and to:

United States Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

11. If Shell fails to pay the civil penalty plus accrued interest within thirty (30) days of the Date of Entry of this Consent Decree, as required by Paragraph 9, interest shall continue to accrue on the unpaid monies through the date of payment. The payment of additional accrued interest shall be in addition to any stipulated penalties that may accrue pursuant to Section VIII (Stipulated Penalties).

12. Shell shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal income tax.

VII. OVERSIGHT, REPORTING AND CERTIFICATIONS

13. Quarterly Reports. Within forty-five (45) days after the end of each Calendar Quarter, from the Date of Entry of this Consent Decree until Termination of this Consent Decree as defined in Section XX (Termination), Shell shall submit to the United States a status report regarding Shell's compliance with Section V (Injunctive Relief) and the Appendices hereto, and any modifications thereof (collectively, "Injunctive Provisions"), during the preceding Calendar Quarter ("Quarterly Reports"). Each Quarterly Report shall, at a minimum, contain:

a. a description of the actions taken by Shell during the previous Calendar Quarter in order to meet the requirements of the Injunctive Provisions of this Consent Decree, including the date (day, month and year) of completion of each such action and the Paragraph number and/or letter of this Consent Decree obligation with which the action was intended to comply;

b. a description of any impediments encountered by Shell in timely meeting the requirements of the Injunctive Provisions of this Consent Decree and the steps taken by Shell to overcome such impediments;

c. the identification of the specific actions remaining to be accomplished in order to comply with the Injunctive Provisions of this Consent Decree, including citations to the numbers and/or letters of Paragraphs requiring such actions, and the anticipated date on which each such action is expected to be accomplished; and

d. a list of any penalties paid pursuant to Section VIII (Stipulated Penalties), including the identification (by number and/or letter) of each Paragraph of the Injunctive Provisions that was not complied with or was violated, the number of days each such Section and Paragraph was not complied with or was violated, and a breakdown of the penalty amount paid for violations of each such Paragraph.

14. Quarterly Meetings. Upon EPA's request, up to four times each year, Shell shall participate in a status conference ("Quarterly Meeting") at EPA's Offices located at the Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, San Juan, Puerto Rico 00907, or at another location agreed upon by Shell and EPA. The Quarterly Meeting shall be held within fifteen (15) days after EPA's request, or at another time agreed upon in writing. Shell's

representatives, including consultants (if deemed necessary by Shell and/or EPA), shall be present for and participate in each Quarterly Meeting. The Quarterly Meeting may be held by teleconference upon written agreement between Shell and EPA.

15. Storage Facility Completion Report. Unless construction of the Storage Facility is not required pursuant to Subparagraph 8.d.i, above, within sixty (60) days after completing the construction of the Storage Facility, Shell shall submit a Storage Facility Completion Report to EPA. The Storage Facility Completion Report shall include:

a. a copy of the as-built construction drawings and specifications;

b. a description of any problems encountered in completing the construction of the Storage Facility and the solutions thereto;

c. a certification that the Storage Facility has been completed pursuant to the provisions of this Consent Decree, including the date of such completion; and

d. the expenses incurred by Shell to complete the construction of the Storage Facility and the estimated annual cost of operating the Storage Facility.

16. EPA may request information or documentation in addition to that described in Paragraph 15 above, in order to determine whether the construction of the Storage Facility has been completed satisfactorily, and Shell shall make best efforts to provide such information or documentation as soon as possible but no later than thirty (30) days after EPA's request, unless otherwise agreed in writing by EPA.

a. After receiving the Storage Facility Completion Report, EPA shall notify Shell whether Shell has satisfactorily completed the construction and initiated operation of the Storage Facility. If the construction of the Storage Facility has not been satisfactorily completed

in accordance with this Consent Decree and Appendix I hereto, and with all applicable work plans, permits, endorsements and schedules, stipulated penalties may be assessed under Section VIII (Stipulated Penalties), beginning on the date Shell receives written notification from EPA that the Storage Facility has not been satisfactorily completed.

b. Any disputes between Shell and EPA concerning the satisfactory completion of the construction of the Storage Facility may be resolved under Section X (Dispute Resolution).

17. FCP Maintenance Completion Report. Within thirty (30) days after the completion of the maintenance of the FCP required by Subparagraph 8.g.i and Appendix III hereto, Shell shall submit an FCP Maintenance Completion Report to EPA and EQB. The FCP Maintenance Completion Report shall include:

a. laboratory analytical results and validation of the sampled excavated material;

b. amount of excavated material;

c. location of final disposal of the excavated material; and

d. maintenance, sampling and analytical costs.

18. EPA may request information or documentation in addition to that described in Paragraph 17 above, in order to determine whether the maintenance of the FCP has been completed satisfactorily, and Shell shall make best efforts to provide such information or documentation as soon as possible but no later than thirty (30) days after EPA's request, unless otherwise agreed to in writing by EPA.

a. After receiving the FCP Maintenance Completion Report, EPA shall

notify Shell whether Shell has satisfactorily completed the maintenance of the FCP. If the maintenance of the FCP has not been satisfactorily completed in accordance with this Consent Decree and Appendix III hereto, and with all applicable work plans, permits, endorsements and schedules, stipulated penalties may be assessed under Section VIII (Stipulated Penalties), beginning on the date Shell receives written notification from EPA that the maintenance of the FCP has not been satisfactorily completed.

b. Any disputes between Shell and EPA concerning the satisfactory completion of the maintenance of the FCP may be resolved under Section X (Dispute Resolution).

19. Authorized Signature and Document Certification. Beginning on the Date of Entry until Termination of this Consent Decree, all reports, certifications and other submissions required under this Consent Decree shall be signed by an authorized Shell official with knowledge of the conditions and requirements of this Consent Decree, and shall bear the certification language set forth below:

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

20. Any public statement, oral or written, in print, film, or other media, made by Shell in English, making reference to any of the Injunctive Provisions of this Consent Decree, shall

include the following language: "This project was undertaken in connection with the settlement of an enforcement action, *United States v. Shell Chemical Yabucoa, Inc.*, taken on behalf of the United States Environmental Protection Agency for alleged violations of the Clean Water Act, 33 U.S.C. §§ 1251-1387." Any public statement, oral or written, in print, film, or other media, made by Shell in Spanish, making reference to any of the Injunctive Provisions of this Consent Decree, shall include the following language: "Este proyecto fue llevado a cabo como parte de una transacción de una acción de cumplimiento tomada por la Agencia de Protección Ambiental Federal contra la empresa Shell Chemical Yabucoa, Inc. por alegadas violaciones de la Ley de Agua Limpia Federal, 33 U.S.C. §§ 1251-1387."

21. The reporting, certification and other requirements of this Consent Decree do not relieve Shell of its obligation to submit reports or information required by the CWA, the regulations promulgated thereunder, the Permit, or any other federal, Commonwealth, or local law or regulation.

VIII. STIPULATED PENALTIES

22. Shell shall be liable to pay to the United States stipulated penalties in the amounts set forth below for the listed violations of this Consent Decree. Unless otherwise indicated, each violation described below pertains to the Facility covered by this Consent Decree:

a. For each day that Shell fails to make payment of the civil penalty in accordance with the provisions of Section VI (Civil Penalty), Shell shall pay stipulated penalties as follows:

Period of noncompliance	Per day
Days 1 - 15	$ 1,000.00
Days 16 - 60	$ 5,000.00
More than 60 days	$ 10,000.00

b. For each discharge event from the 3-Cell into the FCP after the Date of Entry of this Consent Decree, in violation of Subparagraph 8.a, Shell shall pay a stipulated penalty as follows:

i. If a Discharge Event is 0-3 hours in duration, then the stipulated penalty for that event shall be $15,000.

ii. If a Discharge Event is 4-12 hours in duration, then the stipulated penalty for that event shall be $20,000.

iii. If a Discharge Event is 13-24 hours in duration, then the stipulated penalty for that event shall be $25,000.

iv. If a Discharge Event is 25-48 hours in duration, then the stipulated penalty for that event shall be $60,000.

v. If a Discharge Event is more than 48 hours in duration, then the stipulated penalty for that event shall be $90,000.

c. For each day Shell fails to perform the sampling activities pursuant to the requirements and schedule set forth in Subparagraphs 8.g.i and Appendix III to this Consent Decree, Shell shall pay stipulated penalties as follows:

Period of noncompliance	Per day per violation
Days 1 - 6	$ 250.00
Days 7 - 14	$ 750.00
Days 15 - 30	$ 1,500.00
More than 30 days	$ 2,500.00

d. For each day Shell fails to prepare or submit a report, Compliance Plan, SOP, or other deliverable pursuant to the schedules set forth in this Consent Decree and the Appendices hereto, or fails to include the certification and signature requirements set forth in this Consent Decree, Shell shall pay stipulated penalties as follows:

Period of noncompliance	Per day per violation
Days 1 - 6	$ 250.00
Days 7 - 14	$ 500.00
Days 15 - 30	$ 750.00
More than 30 days	$ 1,000.00

e. For each day Shell fails to install or operate the rain gauge pursuant to the schedule set forth in Subparagraph 8.b of this Consent Decree, Shell shall pay stipulated penalties as follows:

Period of noncompliance	Per day per violation
Days 1 - 6	$ 250.00
Days 7 - 14	$ 500.00
Days 15 - 30	$ 750.00
More than 30 days	$ 1,000.00

f. For each day Shell fails to inspect the Outfall 001 Effluent Pipeline pursuant to the schedule set forth in Subparagraph 8.c of this Consent Decree, Shell shall pay a stipulated penalty of $250.00.

g. Unless compliance with the requirements of Subparagraphs 8.d and Appendix I is not required pursuant to Subparagraph 8.d.i, for each day Shell fails to comply with the design, permitting, construction and operation of the Storage Facility pursuant to the schedule set forth in Subparagraphs 8.d and Appendix I to this Consent Decree, Shell shall pay stipulated penalties as follows:

Period of noncompliance	Per day per violation
Days 1 - 6	$ 250.00
Days 7 - 14	$ 500.00
Days 15 - 30	$ 750.00
More than 30 days	$ 1,500.00

h. For each day Shell fails to inspect the SWCS pursuant to the schedule set forth in Subparagraph 8.f of this Consent Decree, Shell shall pay a stipulated penalty of $250.00.

i. For each day Shell fails to implement BMPs at the SWCS pursuant to the schedule set forth in Subparagraph 8.f of this Consent Decree, Shell shall pay a stipulated penalty of $500.00.

j. For each day Shell fails to amend the SWPPP pursuant to the schedule set forth in Subparagraph 8.f of this Consent Decree, Shell shall pay a stipulated penalty of $250.00.

k. For each day Shell fails to conduct maintenance of the FCP in accordance with the schedule or other requirements set forth in Subparagraph 8.g and Appendix III to this Consent Decree, Shell shall pay a stipulated penalty of $500.00.

l. For each day Shell fails to modify, operate or maintain the existing Outfall 002 Pump System pursuant to the schedule or other requirements set forth in Subparagraph 8.g of this Consent Decree, Shell shall pay a stipulated penalty of $250.00

m. For each day Shell fails to develop or implement the DO Sampling Program pursuant to the schedule or other requirements set forth in Subparagraph 8.g of this Consent Decree, Shell shall pay a stipulated penalty of $250.00.

n. For each day Shell fails to develop or implement the FCP SOP pursuant to the schedule or other requirements set forth in Subparagraph 8.g of this Consent Decree, Shell shall pay a stipulated penalty of $250.00.

o. For each day Shell fails to conduct the Hydrology Study or Engineering Analysis pursuant to the schedule or other requirements set forth in Subparagraphs 8.h-i of this Consent Decree, Shell shall pay a stipulated penalty of $250.00.

p. For each day Shell exceeds an effluent limit in the Permit for any parameter at Outfall 002, Shell shall pay a stipulated penalty of $500.00 per parameter.

q. For each day Shell fails to submit to EPA a report as required by Subparagraph 8.i.ii of this Consent Decree, or if the required report fails to satisfy the conditions of Subparagraph 8.i.ii of this Consent Decree, Shell shall pay a stipulated penalty of $250.00.

r. For each day Shell fails to implement the Compliance Plan approved by EPA, pursuant to the schedule set forth in the Compliance Plan and incorporated by reference into this Consent Decree, Shell shall pay stipulated penalties as follows:

Period of noncompliance	Per day per violation
Days 1 - 6	$ 250.00
Days 7 - 14	$ 500.00
Days 15 - 30	$ 700.00
More than 30 days	$ 1,000.00

23. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the day the violation ceases. Stipulated penalties shall accrue simultaneously for separate and different violations of this Consent Decree. Shell shall pay any Stipulated Penalty within thirty (30) days of receiving the United States' written demand, except as provided by Section X (Dispute Resolution).

24. Stipulated Penalties shall continue to accrue during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the

Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed by Shell to the Court, Shell shall pay accrued penalties determined to be owing, together with interest, to the United States within sixty (60) days of the effective date of the agreement or the receipt of EPA's decision, unless otherwise provided by such agreement with or decision of EPA.

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

c. If any Party appeals the District Court's decision, Shell shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) days of receiving the final appellate court decision.

25. Shell shall, as directed by the United States in its demand, pay stipulated penalties owing to the United States under this Section by EFT in accordance with Paragraph 10 of this Consent Decree. If the amount of the stipulated penalty demand does not exceed $50,000, Shell may instead pay the stipulated penalty amount by check in the amount due, payable to the "U.S. Department of Justice," referencing the Civil Action Number of this case, DOJ No. 90-5-1-1-08400 and U.S.A.O. file number, and delivered to the office of the United States Attorney, District of Puerto Rico, at the following address:

United States Attorney's Office
ATTN: FLU Unit
Torre Chardón, Suite 1201
350 Chardón Avenue
San Juan, Puerto Rico 00918

At the time of payment, Shell shall send evidence of the EFT payment or a copy of the check, the letter tendering such payment and a transmittal document stating that the payment is for stipulated penalties and identifying the violation(s) for which the penalties are being paid, to EPA and the United States Department of Justice at the addresses set forth in Section XI (Notices).

26. In the event that a stipulated penalty is not paid when due, the penalty shall be payable with interest from the due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961, plus the amount of the United States' reasonable costs, attorneys' fees or other expenses incurred in seeking payment of the stipulated penalty.

27. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of Rights), nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the rights of the United States to seek additional remedies or sanctions, pursuant to other provisions of this Consent Decree or of any applicable statutes and regulations, including seeking injunctive or other relief for Shell's failure to implement the injunctive relief provisions as agreed to in this Consent Decree.

IX. FORCE MAJEURE

28. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Shell, its contractors, or any entity controlled by Shell, which delays or prevents the performance of any obligation or causes a non-compliance under

this Consent Decree despite Shell's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (i) as it is occurring and (ii) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force majeure" does not include Shell's financial inability to perform any obligation under this Consent Decree. Shell may seek relief under the provisions of this Section for any delay in the performance of any compliance obligation resulting from a failure to obtain, or a delay in obtaining, any federal, Commonwealth, or local permit or approval required to fulfill such obligation, provided that Shell demonstrates that it has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

29. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, which Shell believes has been or may be caused by a force majeure event, Shell shall provide notice to EPA's Caribbean Environmental Protection Division orally at (787) 977-5870 or by facsimile at (787) 289-7982 as soon as possible, but not later than twenty-four (24) hours after the time Shell, any entity controlled by Shell, or Shell's contractors, first knew of, or by the exercise of due diligence should have known of, a claimed force majeure event. Within five (5) days thereafter, Shell shall provide in writing to EPA an explanation and description of the reasons for the delay or non-compliance; the anticipated duration of the delay or non-compliance; all actions taken or to be taken to prevent or minimize the delay or non-compliance; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or non-compliance or the effect of the delay or non-compliance; Shell's reason(s) for attributing such delay to a force majeure event, if it intends to assert such a claim; and a

statement as to whether, the impact of such event at the Facility may cause or contribute to an endangerment to public health, welfare, or the environment. Any written claim of a force majeure event shall be detailed. Shell shall include with any notice all available documentation supporting the claim that the delay or non-compliance was attributable to a force majeure event.

30. Failure to comply with the procedures in Paragraph 29 above shall preclude Shell from asserting a claim of force majeure, unless such failure to comply with Paragraph 29 is itself attributable to a force majeure event.

31. If EPA agrees that a delay or anticipated delay or non-compliance is attributable to a force majeure event, EPA will agree to extend the time for Shell to perform the affected requirements for such time as is necessary to complete those obligations. An extension of time to perform the obligations affected by the force majeure event shall not, by itself, extend the time to perform any other obligation. EPA will notify Shell in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event. Where EPA agrees to an extension of time, the appropriate modification shall be made pursuant to Section XVII (Modification).

32. If EPA does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Shell, EPA will notify Shell in writing of its decision. EPA's position shall be binding unless Shell invokes Dispute Resolution under Section X (Dispute Resolution) no later than twenty (20) days after receipt of EPA's notice. In any such dispute, Shell bears the burden of proving, 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 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 Shell complied with the requirements of Paragraph 29. If Shell carries this burden, the delay at issue shall be deemed not to be a violation by Shell of the affected obligation(s) of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

33. 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. The Parties shall make reasonable efforts informally and in good faith to resolve all disputes or differences of opinion regarding the meaning or implementation of this Consent Decree.

34. If, in the opinion of any Party, there is a dispute with respect to the meaning or implementation of any provision of this Consent Decree, that Party shall send a written notice to the other Party which outlines the nature of the dispute and requests informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond forty-five (45) days from the date when the notice was sent unless that period is modified by written agreement of the Parties.

35. If informal negotiations are unsuccessful, following the close of negotiations the United States shall provide in writing to Shell a Statement of Position regarding the subject of the dispute within forty-five (45) days following the close of negotiations. The United States' Statement of Position shall include or reference, but not necessarily be limited to, any factual data, analysis, or opinion supporting that position and all supporting documents relied upon by the United States. If the United States does not issue its Statement of Position within the

prescribed period, Shell may apply for an order of the Court to require the United States to provide its position in writing.

36. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including supporting documentation, submitted by either Party, and shall contain the United States' final Statement of Position. The United States' position shall be binding unless Shell files with the Court a motion requesting judicial resolution of the dispute, which shall contain a written statement of Shell'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 should be resolved for orderly implementation of the Consent Decree. Petitions by Shell must be filed no more than twenty (20) days after receipt by Shell of the United States' final Statement of Position. The United States shall respond to Shell's motion within the time period allowed by the Local Rules of this Court. Shell may file a reply memorandum, to the extent permitted by the Local Rules. In any such dispute, Shell shall have the burden of proving that the United States' position is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the United States' position shall be based on the administrative record.

37. Invocation of the dispute resolution procedures shall not toll the accrual of stipulated penalties or any other requirements of the Consent Decree affected by the dispute, unless the Parties agree in writing or the Court issues an order to that effect. In any event, payment of any accrued stipulated penalties shall be stayed pending the outcome of the dispute resolution process.

XI. NOTICES

38. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be in English, referencing the name, caption and docket number of this action, and shall be made in writing and sent via certified U.S. Postal Service mail, overnight express mail, or hand delivery, as follows:

To the United States:

By mail:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08400

By courier or express mail:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
601 D Street, N.W., Room 2121
Washington, D.C. 20004
Re: DOJ No. 90-5-1-1-08400

and

By mail or courier or express mail:

Chief, Multi-Media Permits and Compliance Branch
Caribbean Environmental Protection Division
United States Environmental Protection Agency
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907-4127
Re: *U.S. v. Shell Chemical Yabucoa, Inc.*, Civ. No. 09-1019

Chief, Water and General Law Branch
Office of Regional Counsel
Unites States Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007
Re: *U.S. v. Shell Chemical Yabucoa, Inc.*, Civ. No. 09-1019

For judicial filings only:

United States Attorney's Office
Torre Chardón, Suite 1201
350 Chardón Avenue
San Juan, Puerto Rico 00918
Re: DOJ No. 90-5-1-1-08400

To EPA:

By mail or courier or express mail:

Chief, Multi-Media Permits and Compliance Branch
Caribbean Environmental Protection Division
United States Environmental Protection Agency
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907-4127
Re: *U.S. v. Shell Chemical Yabucoa, Inc.*, Civ. No. 09-1019

Chief, Water and General Law Branch
Office of Regional Counsel
Unites States Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007
Re: *U.S. v. Shell Chemical Yabucoa, Inc.*, Civ. No. 09-1019

To the Commonwealth of Puerto Rico:

By mail:

Director, Water Quality Area
Environmental Quality Board
Commonwealth of Puerto Rico
P.O. Box 11488
San Juan, Puerto Rico 00910

By courier or express mail:

Director, Water Quality Area
Environmental Quality Board
State Road 8838, Sector El Cinco
1308 Ponce de León Avenue
Río Piedras, Puerto Rico 00907

To Shell:

By mail:

Shell Chemical Yabucoa, Inc.
ATTN: Hans Rutzen
P.O. Box 186
Yabucoa, Puerto Rico 00761-0186

By courier or express mail:

Shell Chemical Yabucoa, Inc.
ATTN: Hans Rutzen
State Road 901, Km. 2.7
Camino Nuevo Ward
Yabucoa, Puerto Rico 00767

and

By mail:

Jerry Lucas Marrero, Esq.
McConnell Valdés LLC
P.O. Box 364225
San Juan, Puerto Rico 00936-4225

By courier or express mail:

Jerry Lucas Marrero, Esq.
McConnell Valdés LLC
270 Muñoz Rivera Avenue, 9th Floor
San Juan, Puerto Rico 00918

For judicial filings only:

Juan A. Marqués, Esq.
Jerry Lucas Marrero, Esq.
McConnell Valdés LLC
P.O. Box 364225
San Juan, Puerto Rico 00936-4225

39. Any Party may, by written notice to the other Parties, change its designated notice recipient(s) or notice address(es) provided above.

40. Notices, submissions and communications required pursuant to this Consent Decree shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree (e.g., payments) or by mutual agreement of the Parties, in writing.

XII. INFORMATION COLLECTION AND RECORD RETENTION

41. Nothing in this Consent Decree in any way limits any right of entry held by the United States or right to inspect the Facility, or limits any right of the United States to obtain information. Likewise, nothing in this Consent Decree in any way limits or affects any duty or

obligation of Shell to maintain documents, records, or other information, imposed by federal or Commonwealth laws, regulations, or permits.

42. For purposes of this Section and of Section VIII (Stipulated Penalties), Shell shall be required to preserve for five (5) years after the Termination of the Consent Decree the following records, logs and documents:

a. Process Wastewater Treatment Plant operational log books;

b. Unanticipated bypass notifications (24-hour and/or five-day notices, as applicable);

c. Computerized or other written maintenance management system files in which routine facility maintenance information is loaded or otherwise recorded, including job orders for corrective or preventive maintenance for the 3-Cell, rain gauges, Outfall 001 Effluent Pipeline, Storage Facility (unless construction and operation is not required pursuant to Subparagraph 8.d.i), Storm Water Collection Systems, Storm Water Pollution Prevention Plan, Flood Control Pond, Outfall 002 Pump System, and any measures implemented pursuant to the Compliance Plan;

d. Inspection punch list or report performed for the 3-Cell, rain gauges, Outfall 001 Effluent Pipeline, Storage Facility (unless construction and operation is not required pursuant to Subparagraph 8.d.i), Storm Water Collection Systems, Storm Water Pollution Prevention Plan, Flood Control Pond, Outfall 002 Pump System, and any measures implemented pursuant to the Compliance Plan, compiled daily, weekly, monthly, semi-annually or annually, as applicable;

e. Police reports documenting employee security and/or vandalism-related

incidents, when prepared; and

f. Reports and notifications documenting discharges from the 3-Cell into the FCP (24-hour and/or five-day notices, as applicable).

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

a. Monitor the progress of activities required under this Consent Decree;

b. Verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. Obtain samples and, upon request, splits of any samples taken by Shell or its representatives, contractors, or consultants;

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

e. Assess Shell's compliance with this Consent Decree.

44. Until five (5) years after the Termination of this Consent Decree, Shell 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 comes into its or its contractors' or agents' possession or control, and that relates in any manner to Shell'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, the United States may request

copies of any documents, records, or other information required to be maintained under this Paragraph and Paragraph 42.

45. At the conclusion of the information-retention period provided in the preceding Paragraph and Paragraph 42, Shell shall notify the United States, EPA and the Commonwealth of Puerto Rico (in accordance with Section XI (Notices)) at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and Paragraph 42, and, upon request by the United States, Shell shall deliver any such documents, records, or other information to EPA. Shell may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Shell asserts such a privilege, it shall provide the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of each author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the document, record, or information; and (vi) the privilege asserted by Shell. Notwithstanding the preceding sentence, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege. Any dispute regarding disclosure of any document upon which a privilege has been asserted by Shell may be subject to Section X (Dispute Resolution).

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

XIII. COMPLIANCE WITH APPLICABLE LAWS

47. Except to the extent provided in Section XIV (Effect of Settlement and Reservation of Rights), this Consent Decree in no way relieves Shell of its responsibility to comply with all applicable federal, Commonwealth of Puerto Rico and local laws, regulations, and permits, and compliance with this Consent Decree shall not constitute a defense to any action pursuant to said laws, regulations, or permits. Shell shall be responsible for obtaining all Commonwealth of Puerto Rico or local permits necessary for the performance of any obligations imposed in this Consent Decree. This Consent Decree shall not be construed as a determination of any issue related to any federal, Commonwealth of Puerto Rico, or local permit, nor shall it be construed to be a NPDES Permit or a modification of any NPDES Permit or other permit.

48. Except to the extent specified in Section XIV (Effect of Settlement and Reservation of Rights), nothing in this Consent Decree relieves Shell from any requirements imposed on it relating to the CWA, laws of the Commonwealth of Puerto Rico, or any orders or permits issued pursuant to the foregoing.

XIV. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

49. This Consent Decree resolves the United States' civil claims for the violations alleged in the Complaint filed in this action through the Date of Lodging.

50. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, and Shell reserves all legal and equitable defenses, except as expressly stated herein. This Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the CWA, regulations promulgated thereunder, or Permit conditions, except as expressly specified herein.

51. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, all rights against Shell with respect to all matters other than those expressly included in its Complaint, including but not limited to the following:

a. Claims based on a failure by Shell to meet a requirement of this Consent Decree;

b. Claims for civil and stipulated penalties, if any, under the terms of this Consent Decree;

c. Any criminal liability;

d. Claims based on discharges from the Facility, whether or not covered by the terms of this Consent Decree, which may pose an imminent and substantial endangerment to health or to the environment in accordance with Section 504 of the CWA, 33 U.S.C. § 1364;

e. With respect to CWA violations that Shell is required by statute, regulation or permit to report to EPA, claims based on Shell's failure to report such violations that otherwise would have been included within the scope of the allegations in the Complaint; and

f. Actions to enforce any previous Orders of the Court, any Consent Decree between the United States and Shell, and any administrative order issued by EPA to Shell not expressly superceded by this Consent Decree.

52. Except as provided in this Section, the entry of this Consent Decree shall not limit or otherwise preclude the United States from taking criminal or additional civil enforcement action with regard to the Facility, including all appurtenances thereto, pursuant to any federal or

Commonwealth law, regulation or permitting condition. EPA reserves the right to order or to require Shell to take such other corrective action or response measures as EPA deems necessary to protect human health or the environment. Except as otherwise specified in this Consent Decree, Shell reserves its right to raise any defense available to it to any such criminal, civil, or other action instituted by the United States or EPA.

53. This Consent Decree is not a permit, or a modification of any permit, under any federal, Commonwealth, or local laws or regulations. Shell is responsible for achieving and maintaining complete compliance with all applicable federal, Commonwealth of Puerto Rico, and local laws, regulations and permits; and Shell'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 does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Shell's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §§ 1251-1387, or with any other provisions of federal, Commonwealth, or local laws, regulations, or permits.

54. This Consent Decree does not limit or affect the rights of Shell or of the United States 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 Shell, except as otherwise provided by law.

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

XV. COSTS

56. The Parties shall bear their own costs of this action, including attorneys' fees,

except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Shell, as set forth herein.

XVI. PUBLIC PARTICIPATION

57. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with the requirements of 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the public comments establish that entry of this Consent Decree would be inappropriate, improper, inadequate, or otherwise not in the public interest. Shell agrees to the entry of this Consent Decree, as presented to the Court for lodging, without further notice.

XVII. MODIFICATION

58. No material modification shall be made to this Consent Decree without written agreement of all Parties and written approval of the Court, except as otherwise provided under this Consent Decree. Any material modification to this Consent Decree shall be incorporated into this Consent Decree and shall be enforceable by the Court. Any non-material modification agreed to in writing by the Parties shall be deemed incorporated into this Consent Decree and shall be enforceable by the Court. Nothing in this Paragraph shall be deemed to alter the Court's power to supervise this Consent Decree.

59. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by that Section, 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).

XVIII. RETENTION OF JURISDICTION

60. The Court shall retain jurisdiction of this matter for all purposes, including resolving disputes arising under this Consent Decree, modifying this Consent Decree or effectuating or enforcing compliance with the terms of this Consent Decree, until Termination of the Consent Decree.

XIX. EFFECTIVE DATE

61. Unless otherwise provided herein, the Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's Docket.

XX. TERMINATION

62. Except for the records retention provisions of this Consent Decree, this Consent Decree shall be terminated when the conditions of either Subparagraph 62.a or Subparagraph 62.b, below, have been satisfied:

a. i. Shell has paid (1) the civil penalty described in Section VI (Civil Penalty) and all accrued interest thereon, and (2) any stipulated penalties accrued pursuant to Section VIII (Stipulated Penalties) and all accrued interest thereon, as required by this Consent Decree; and

ii. Shell has fully implemented all injunctive relief required by Section V (Injunctive Relief) and the Appendices hereto, including any modifications to Section V or the Appendices hereto; and

iii. Shell has completed and submitted all reports, notifications and/or

any other required submission in accordance with the requirements set forth in Section V (Injunctive Relief), Section VII (Oversight, Reporting and Certifications), Section XI (Notices), and the Appendices hereto; and

iv. EPA has issued a new NPDES permit for the Facility that requires Shell to provide for the temporary storage of at least 1.34 MGs of contaminated storm water runoff generated at the Facility to prevent discharges from the 3-Cell API Unit Oil/Water Separator into the Flood Control Pond; or

b. i. Shell has paid (1) the civil penalty described in Section VI (Civil Penalty) and all accrued interest thereon, and (2) any stipulated penalties accrued pursuant to Section VIII (Stipulated Penalties) and all accrued interest thereon, as required by this Consent Decree; and

ii. Shell has fully implemented all injunctive relief required by Section V (Injunctive Relief) and the Appendices hereto, including any modifications to Section V or the Appendices hereto; and

iii. Shell has completed and submitted all reports, notifications and/or any other required submission in accordance with the requirements set forth in Section V (Injunctive Relief), Section VII (Oversight, Reporting and Certifications), Section XI (Notices), and the Appendices hereto; and

iv. EPA has terminated the Permit pursuant to 40 C.F.R. § 122.64, and no other NPDES permit has been issued for the Facility.

63. The Parties may at any time after the conditions in this Section have been satisfied jointly move to terminate this Consent Decree based on their representation that all of

its requirements have been satisfied. Shell may unilaterally move to terminate this Consent Decree if: (a) it has a good faith basis to believe that the conditions of this Section have been satisfied; and (b) it has unsuccessfully sought EPA's concurrence that the conditions of this Section have been satisfied. The United States reserves the right to oppose any such motion by Shell to terminate this Consent Decree. Shell's motion to terminate this Consent Decree shall only be granted if Shell can demonstrate on the administrative record that EPA's opposition to Shell's motion to terminate is arbitrary and capricious or otherwise not in accordance with law.

XXI. SIGNATORIES AND SERVICE

64. Each undersigned representative of Shell and the Assistant Attorney General for the Environment and Natural Resources Division of the United States 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.

65. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

66. Shell agrees not to oppose entry of this Consent Decree by the Court or to challenge any provisions of this Consent Decree, unless the United States has notified Shell in writing that it no longer supports entry of this Consent Decree.

67. Shell 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 Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXII. INTEGRATION

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

XXIII. FINAL JUDGMENT

69. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Shell.

SO ORDERED this 11 day of May, 2009.

S/ Jay A. Garcia-Gregory
Hon.
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Shell Chemical Yabucoa, Inc.*

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

Dated: 26 Dec 2008

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Dated: 1/12/09

BETHANY ENGEL
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
(202) 514-6892

ROSA E. RODRIGUEZ-VELEZ
United States Attorney
District of Puerto Rico

ISABEL MUÑOZ
Assistant United States Attorney
District of Puerto Rico
Torre Chardón, Suite 1201
305 Chardón Avenue
San Juan, Puerto Rico 00918

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Shell Chemical Yabucoa, Inc.*

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

Dated: 12/17/08

ERIC SCHAAF
Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866

Dated: 12-29-08

ALAN J. STEINBERG
Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

OF COUNSEL:

NINA DALE
Assistant Regional Counsel
Water & General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
(212) 637-3231

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Shell Chemical Yabucoa, Inc.*

FOR THE DEFENDANT SHELL CHEMICAL YABUCOA, INC.:

Dated: 12/1/08

FRANS SPIKER
Site Manager
Shell Chemical Yabucoa, Inc.
State Road 901, Km. 2.7
Camino Nuevo Ward
Yabucoa, Puerto Rico 00767

Dated: 12/8/08

JUAN A. MARQUÉS
McConnell Valdés LLC
P.O. Box 364225
San Juan, Puerto Rico 00936-4225

Dated: 12/4/08

JERRY LUCAS MARRERO
McConnell Valdés LLC
P.O. Box 364225
San Juan, Puerto Rico 00936-4225

Dated: 12/4/08

DOIRA DÍAZ
McConnell Valdés LLC
P.O. Box 364225
San Juan, Puerto Rico 00936-4225

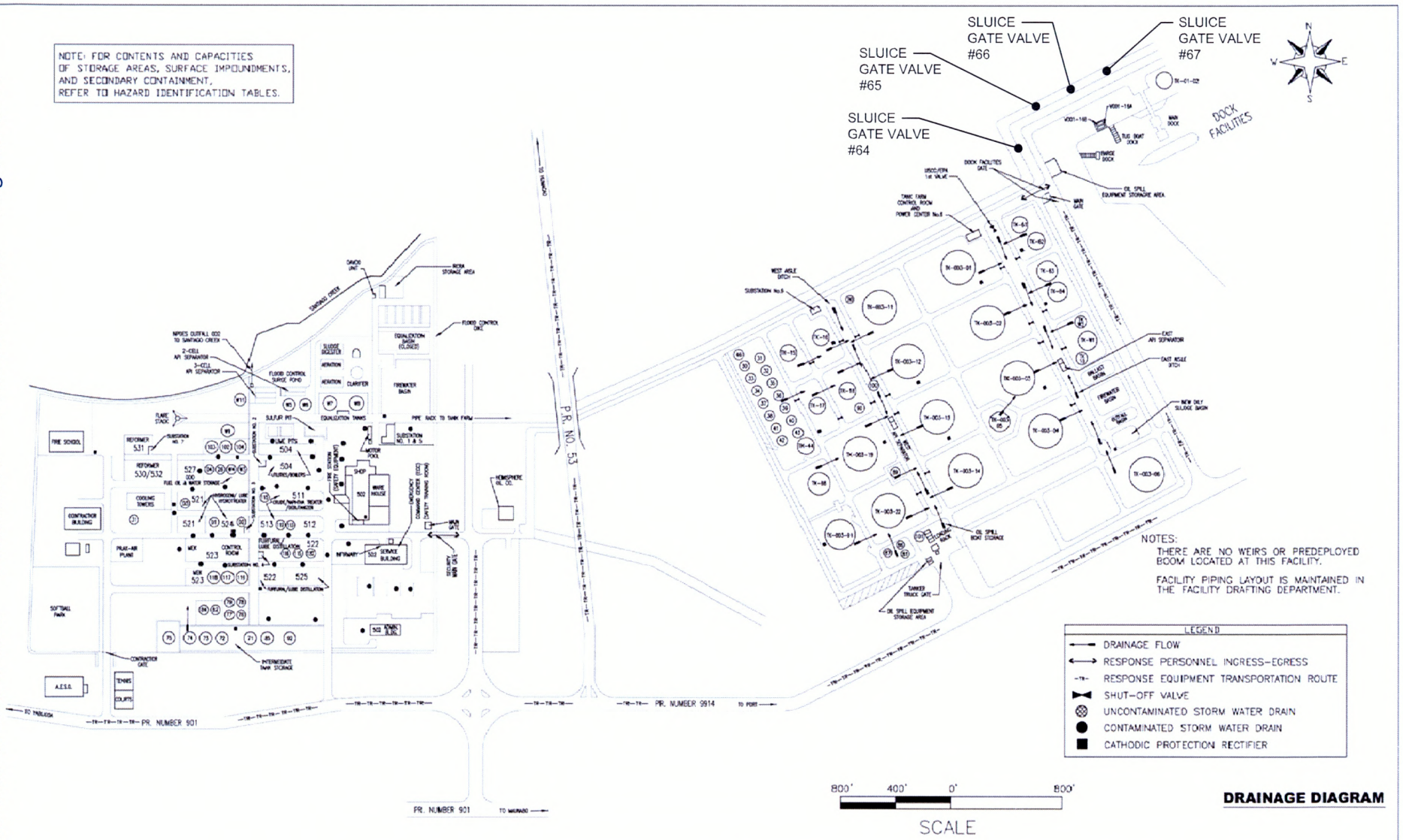
APPENDIX I

DESIGN, PERMITTING, ENDORSEMENT AND CONSTRUCTION ACTIVITIES FOR THE CONTAMINATED STORM WATER STORAGE FACILITY			
	ACTION ITEM	**DEADLINE**	**DESCRIPTION OF REQUIRED ACTION**
1.	Design Firm Selection and Project Conceptual Design	No later than ninety (90) days from the Startup Date	a. Select design firm and prepare conceptual design. b. Submit to EPA the name of the design firm consultant, statement of qualifications, contact person, address, location, electronic mail, telephone and facsimile numbers. c. Submit to EPA and all necessary local, state and federal agencies, the conceptual design documents, including but not limited to an executive summary, schematic drawings, design and construction schedules, and preliminary cost estimates for the design and construction of the Storage Facility. Note: Shell may opt to conduct design activities in-house.
2.	Submission of Environmental Document	No later than ninety (90) days from the Startup Date	Submit to EQB and all necessary local, state and federal agencies the environmental document (e.g., environmental assessment) required for the Storage Facility. Note: Shell shall notify EPA if the submission of the environmental document is not required and provide the basis for such determination.
3.	Final Design, Construction Drawings and Specifications	No later than three hundred (300) days from the Startup Date	a. Complete the final design, construction drawings and specifications and construction cost estimates. b. Notify EPA that action item 3.a. has been completed.

	ACTION ITEM	DEADLINE	DESCRIPTION OF REQUIRED ACTION
4.	Approval of Environmental Document; Construction and Environmental Permits and Endorsement Submittals	No later than three hundred sixty (360) days from the Startup Date	a. Obtain approval or conditional approval of the environmental document and submit a copy of the approval document(s) to EPA. b. Submit applications for all construction and environmental permits and endorsements required by local, state and federal agencies. c. Notify EPA that action item 4.b. has been completed.
5.	Commencement of Construction Activities	No later than five hundred forty (540) days from the Startup Date	a. Submit to EPA a copy of the design (including drawings and design specifications) and construction costs (including compliance with construction and environmental permits). b. Submit to EPA a copy of all required construction and environmental permits. c. Submit to EPA the name of the construction contractor, contact person, address, location, electronic mail address, telephone and facsimile numbers, construction contract and final construction schedule. d. Commence construction activities in accordance with the approved design, construction drawings, specifications and schedules, and all construction and environmental permits required for the Storage Facility.
6.	Completion of Construction Activities and Commissioning	No later than eight hundred seventy (870) days from the Startup Date	a. Complete construction activities in accordance with the approved design, construction drawings and specifications, and all construction and environmental permits required for the Storage Facility. b. Place Storage Facility into service.

	ACTION ITEM	DEADLINE	DESCRIPTION OF REQUIRED ACTION
7.	Project Completion Notification	No later than nine hundred (900) days from the Startup Date	Submit notification to EPA and EQB, informing that construction activities have been completed and operation of the Storage Facility has commenced.

APPENDIX II



SHELL CHEMICAL YABUCOA, INC. YABUCOA REFINERY and MARINE FACILITY YABUCOA, P.R.	JOB NO: 6823 DRAWN: W.C.S.	DATE: 08/20/07 SCALE: AS NOTED	DRAINAGE DIAGRAM

Response Management Associates, Inc.
6620 Cypresswood Drive, Suite 200
Spring (Houston), Texas 77379
Phone: (281) 320-9796

AUGUST 20, 2007 10:03:03 a.m. AcadVer:16.0
Drawing: Z:\Shell\39681641 SPCC\DWG\ENV\2007-08-15 DRAINAGE DIAGRAM

Yabucoa Refinery and Marine Facility

APPENDIX III

MAINTENANCE OF THE FLOOD CONTROL POND		
	DESCRIPTION OF REQUIRED ACTION	**DEADLINE**
1.	Submit to EQB, the Puerto Rico Department of Natural Resources and Environment, and all necessary local, state and federal agencies the environmental document (e.g., environmental assessment) and permit applications required for maintenance of the FCP. Note: Shell shall notify EPA if the submission of the environmental document and/or permit applications is not required, and provide the basis for such determination.	No later than one hundred fifty (150) days from the Date of Entry of this Consent Decree
2.	Obtain approval or conditional approval of the environmental document and permits, and submit a copy of the approval document(s) to EPA.	No later than three hundred thirty (330) days from the Date of Entry of this Consent Decree
3.	Commence maintenance activities (including full RCRA sampling and analysis) in accordance with the original design dimensions and storage capacity.	No later than three hundred ninety (390) days from the Date of Entry of this Consent Decree
4.	Complete FCP maintenance activities.	No later than five hundred seventy (570) days from the Date of Entry of this Consent Decree
5.	Notify EPA and EQB that all FCP maintenance activities have been completed.	No later than six hundred (600) days from the Date of Entry of this Consent Decree