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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Plaintiff v. ALOHA PETROLEUM, LTD., Defendant.	Civil No.

CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America ("Plaintiff" or "United States"), on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this Court (the "Court") in this action concurrently with this Consent Decree alleging that Defendant Aloha Petroleum, Ltd. ("Aloha") violated the Clean Air Act ("CAA"), 42 U.S.C. § 7401, *et seq.*, and the Clean Water Act, ("CWA"), 33 U.S.C. § 1311, *et seq.*, at a bulk gasoline terminal facility located at 999 Kalanianaole Avenue in Hilo, Hawaii ("Hilo East Facility");

WHEREAS, the Complaint against Aloha alleges that Aloha, the lessee of the Hilo East Facility property, the owner of all equipment at the Hilo East Facility, and the operator of the Hilo East Facility, violated the CAA's New Source Performance Standards ("NSPS") for Bulk Gasoline Terminals, 40 C.F.R. Part 60, Subpart XX, and the CWA's Oil Pollution Prevention regulations, 40 C.F.R. Part 112, relating to secondary containment;

WHEREAS, Defendant Aloha does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, the United States notified the State of Hawaii of the commencement of this lawsuit;

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

NOW THEREFORE, with the consent of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28

U.S.C. §§ 1331, 1345, and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E); and over the Parties. Venue lies in this District pursuant to 42 U.S.C. § 7413(b), 42 U.S.C. § 6928(a) and (g), 33 U.S.C. §§1319(b) and (d) and 1321(b)(7)(E), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a). For purposes of this Consent Decree or any action to enforce this Decree, Aloha consents to the Court's jurisdiction over this Decree and any such action and over Aloha and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Aloha agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E).

II. APPLICABILITY

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

4. a. No transfer of ownership or operation of any of the Aloha Facilities, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Aloha of its obligation to ensure that the terms of this Consent Decree are implemented. At least 20 Days prior to such transfer, Aloha shall provide a copy of this Consent Decree to the proposed transferee and shall provide written notice of the prospective transfer to EPA Region IX and the United States Department of Justice in accordance with Section XIII of this Consent Decree (Notices). Aloha shall additionally provide a copy of the written transfer agreement to EPA Region IX, the United States Attorney for the District of Hawaii, and the United States

Department of Justice in accordance with Section XIII of this Consent Decree (Notices) no later than 30 days after the transfer. Any attempt to transfer ownership or operation of the Hilo East Facility without complying with this Paragraph constitutes a violation of this Decree.

b. Notwithstanding the terms of Paragraph 4.a., in the event that Aloha's leasehold interest in the Hilo East Facility is terminated, (i) at least 20 Days prior to the effective date of such termination, Aloha shall give notice of such termination to EPA Region IX and the United States Department of Justice in accordance with Section XIII of this Consent Decree (Notices); and (ii) upon the effective date of such termination, Aloha shall be relieved of its obligation to ensure compliance with those terms of this Consent Decree that relate to the installation of Improved Containment at the Hilo East Facility (Paragraph 15.b. – d.) and the re-start of the operation of the loading rack at the Hilo East Facility (Paragraph 14), unless the subsequent lessee is an entity affiliated with or related to Aloha or Aloha again becomes an owner or operator of the Hilo East Facility.

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

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

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the CAA or CWA or in

regulations promulgated pursuant to or authorized by those Acts shall have the meanings assigned to them in those Acts or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Aloha" shall mean Aloha Petroleum, Ltd.

b. "Aloha Facility" or "Aloha Facilities" shall refer to the Hilo East Facility and the following facilities owned or operated by Aloha:

i. "Hilo West Terminal" located at 661 Kalanianaole Avenue, Hilo, Hawaii;

ii. "Kahului Terminal" located at 60 Hobron Avenue, Kahului, Hawaii;

iii. "Nawiliwili Terminal" located at 3145 Waapa Road, Lihue, Hawaii;

iv. "Barbers' Point Terminal" located at 91-139 Hanua Street, Kapolei, Hawaii; and

v. "Honolulu Terminal" located at 789 North Nimitz Highway, Honolulu, Hawaii.

c. "Complaint" shall mean the Complaint filed by the United States in this action.

d. "Consent Decree" or "Decree" shall mean this Consent Decree.

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

f. "Defendant" or "Aloha" shall mean Aloha Petroleum, Ltd.

g. "Effective Date" shall have the meaning provided in Section XIV.

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

i. "Final Title V Permit" shall mean a permit issued under Title V of the Clean Air Act and 40 C.F.R. Part 70 or 71, whichever is applicable, that (i) meets the requirements of this Consent Decree; (ii) has completed all permit procedures required by 40 C.F.R. Part 70 or 71, whichever is applicable; and (iii) is no longer subject to any judicial review procedures.

j. "Hawaii DOH" shall mean the Hawaii Department of Health and any of its successor departments or agencies.

k. "Hilo East Facility" shall mean the bulk gasoline terminal operated by Aloha and located at 999 Kalanianaole Avenue in Hilo, Hawaii.

l. "Improved Containment" shall mean a secondary containment structure that does not include a basin floor comprised solely of crushed rock. Improved Containment must include, in place of or in addition to crushed rock, an asphalt, rubber, PVC, concrete or other liner system that is certified by a professional engineer to be sufficient to prevent releases of oil as required by 40 C.F.R. §§ 112.7(c) and 112.8(c)

m. "NSPS A and NSPS XX" shall mean the requirements of 40 C.F.R. Part 60, Subpart XX, as well as the applicable requirements of 40 C.F.R. Part 60, Subpart A.

n. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.

o. "Parties" shall mean the United States and Aloha.

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

roman numeral.

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

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date, Aloha shall pay the sum of $650,000.00 as a civil penalty, together with daily interest accruing from the Effective Date, at the rate specified in 28 U.S.C. § 1961 as of the Effective Date, until the civil penalty is paid in full.

9. Payment Instructions.

Aloha shall pay the civil penalty amount specified in Paragraph 8 by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with instructions provided to Aloha by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Hawaii after the Effective Date. The payment instructions will be provided by the FLU following lodging of this Consent Decree and will include a Consolidated Debt Collection System ("CDCS") number, which Aloha shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Robert Fung
General Counsel
Aloha Petroleum, Ltd.
1132 Bishop Street, Suite 1700
Honolulu, HI 96813
Phone: (808) 522-9754
Email: rfung@alohagas.com

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

10. At the time of the payment set forth in Paragraph 8, Aloha shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIII; and (iii) to EPA in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Aloha Petroleum, Ltd.*, shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-10467. The payment made pursuant to Paragraphs 8 and 9 shall be accompanied by a statement that $117,000 of the payment is for the CWA civil penalty and is to be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(a), § 4304 of Pub. L. No. 101-380, and 26 U.S.C. § 9509(b)(8).

11. Aloha shall not deduct any penalty paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

12. Aloha shall comply with applicable requirements of statutes, regulations, permits, or other legal requirements alleged to have been violated with respect to the Hilo East Facility.

13. Hilo East Facility Closure.

a. No later than 60 Days after the date of lodging of this Consent Decree, Aloha shall "permanently close" the Hilo East Facility as that term is defined in 40 C.F.R. § 112.2; and

b. No later than 90 Days after the date of lodging of this Consent Decree, Aloha shall submit written certification to EPA that:

i. Aloha has "permanently closed" the Hilo East Facility as that term is defined in 40 C.F.R. § 112.2; and

ii. Aloha has ceased operation of the loading racks at the Hilo East Facility.

14. Loading Rack Requirements for the Hilo East Facility. If Aloha restarts operations involving use of any loading rack for the delivery of liquid product into gasoline tank trucks at the Hilo East Facility, Aloha shall comply with the requirements of NSPS A and NSPS XX. Aloha shall not operate any loading rack for such use at the Hilo East Facility after the Effective Date unless Aloha complies with the requirements of NSPS A and NSPS XX including, but not limited to:

a. Installing a vapor collection system, as required by 40 C.F.R. § 60.502(a);

b. Limiting emissions from the loading of liquid product from the Hilo East Terminal loading rack into gasoline tank trucks to not more than 35 milligrams of total organic compounds per liter of gasoline loaded, as required by 40 C.F.R. § 60.502(b); and

c. Conducting a performance test, as required by 40 C.F.R. §§ 60.8 and 60.503.

At least 60 Days prior to restarting operations involving use of any loading rack for the delivery of liquid product into gasoline tank trucks at the Hilo East Facility, Aloha shall provide notice to the EPA at the address provided in Section XIII (Notices) of Aloha's intent to restart such operations at the Hilo East Facility.

15. Improved Containment Installation at Aloha Facilities.

a. Aloha shall install Improved Containment at all Aloha Facilities, except as set forth below in subparagraph 15.b, in accordance with the following schedule:

i. Hilo West Terminal – Effective Date;

ii. Kahului Terminal - Effective Date;

iii. Nawiliwili Terminal - November 15, 2015;

iv. Honolulu Terminal – June 5, 2016; and

v. Barbers' Point Terminal – December 15, 2016

b. If Aloha resumes operations that involve the storage of oil at the Hilo East Facility, or at a portion of the Hilo East Facility, after the Effective Date, Improved Containment shall be installed at the Hilo East Facility, or the portion of the Hilo East Facility where such operations will be resumed, prior to the resumption of operations.

c. Prior to the completion of Improved Containment as set forth above in subparagraphs 15.a. and b., Aloha shall have prepared and had certified by a professional engineer an amended Spill Prevention, Countermeasure and Control Plan as otherwise required by 40 C.F.R. § 112.5.

d. Within 30 Days of installing Improved Containment at any Aloha Facility, Aloha shall provide notice of the completed installation to the EPA Oil Enforcement Inspector at the address provided in Section XIII (Notices).

16. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA shall in writing either: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

17. If the submission is approved pursuant to Paragraph 16(a), Aloha shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 16(b) or (c), Aloha shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to

Aloha's right to dispute only the specified conditions or the disapproved portions, under Section IX (Dispute Resolution).

18. If the submission is disapproved in whole or in part pursuant to Paragraph 16(c) or (d), Aloha shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies in the submission and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Aloha shall proceed in accordance with the preceding Paragraph.

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

20. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Aloha to correct any deficiencies, in accordance with the preceding Paragraphs, subject to Aloha's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

21. Title V Permitting. No later than 90 Days after the Effective Date, and prior to termination of Aloha's leasehold interest in the Hilo East Facility, Aloha or Aloha's affiliate shall submit to Hawaii DOH's permitting office, with a copy sent to EPA in accordance with Section XIII (Notices), a Title V Permit application for a modification to the Hilo East Facility's Title V Permit in accordance with the procedures of Title V of the Clean Air Act and 40 C.F.R. Part 70, including the applicable requirements of Hawaii's EPA-approved Title V permit

program. The Title V Permit application shall include a condition that all loading racks at the Hilo East Terminal are subject to NSPS A and NSPS XX and shall incorporate the requirements of Paragraph 14. The submission of the foregoing Title V Permit application shall not require the installation of a vapor collection system or other loading rack components pursuant to NSPS A and NSPS XX at the Aloha Hilo East Facility unless the operations involving use of any loading rack for the delivery of liquid product into gasoline tank trucks at the Aloha Hilo East Facility are restarted. Aloha and Aloha's affiliate will not oppose in any forum the incorporation of any or all of these conditions into its Title V Permit for the Aloha Hilo East Facility.
The failure to submit the Title V permit application within the time period specified in this Paragraph 21 does not relieve Aloha or Aloha's affiliate of the obligation to submit the Title V application as required by this Paragraph 21 or to receive a Final Title V Permit for the Hilo East Facility as required by Paragraph 74.

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

VI. REPORTING REQUIREMENTS

23. Aloha shall submit the following reports:

a. By July 31st and January 31st of each year after the lodging of this

Consent Decree, until termination of this Decree pursuant to Section XVII (Termination), Aloha shall submit a semi-annual report regarding the implementation of this Consent Decree for the preceding six months that shall include the status of any construction or compliance measures; completion of milestones; problems encountered or reasonably anticipated, together with implemented or proposed solutions; status of permit applications; and reports to state agencies;

b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Aloha violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Aloha shall notify the United States of such violation and its likely duration, in writing, within 10 Days of the day Aloha first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Aloha shall so state in the report. Aloha shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the day Aloha becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Aloha of its obligation to provide the notice required by Section VIII (Force Majeure).

24. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Aloha's performance under this Decree, or the performance of any Aloha Facility, may pose an immediate threat to the public health or welfare or the environment, Aloha shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Aloha first becomes aware of the violation or event. This procedure

is in addition to the requirements set forth in the preceding Paragraph.

25. All reports shall be submitted to the persons designated in Section XIII (Notices).

26. Each report submitted by Aloha under this Section shall be signed by an official of Aloha and shall include the following certification:

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

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

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

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

VII. STIPULATED PENALTIES

30. Aloha shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all

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

31. Late Payment of Civil Penalty. If Aloha fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Aloha shall pay to the United States a stipulated penalty of $2,500.00 per Day for each Day that the payment is late.

32. Compliance.

The following stipulated penalties shall accrue per violation per Day for each violation of a requirement of Section V (Compliance Requirements) except for the reporting and notice requirements of Section V (Compliance Requirements):

Penalty Per Violation Per Day	Period of Noncompliance
$1,500.00	1st through 14th Day
$1,750.00	15th through 30th Day
$2500.00	31st Day and beyond

33. Reporting and Other Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of (i) the reporting or notice requirements of Section V (Compliance Requirements) or Section VI (Reporting Requirements) of this Consent Decree; or (ii) any other requirement of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$ 500.00	1st through 14th Day
$1,000.00	15th through 30th Day
$1,500.00	31st Day and beyond

34. Stipulated penalties under this Section shall begin to accrue on the Day after

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

35. Aloha shall pay any stipulated penalty to the United States within 30 Days of receiving the United States' written demand.

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

37. Stipulated penalties shall continue to accrue as provided in Paragraph 34 during any Dispute Resolution, but need not be paid until the following:

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

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

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

38. Aloha shall pay stipulated penalties owing to the United States in the manner set forth and with the payment confirmation notices required by Paragraphs 9 and 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which

violation(s) the penalties are being paid.

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

40. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States (including, but not limited to, statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt) for Aloha's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of CAA or CWA statutory or regulatory requirements, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

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

effects of the delay are minimized. "Force Majeure" does not include Aloha's financial inability to perform any obligation under this Consent Decree.

42. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Aloha shall provide notice orally and by electronic or facsimile transmission as required by Section XIII (Notices) within 72 hours of when Aloha first becomes aware that the event might cause a delay. Within10 Days thereafter, Aloha shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Aloha's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Aloha, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Aloha shall include with any notice documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above notice requirements shall preclude Aloha from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Aloha shall be deemed to know of any circumstance of which Aloha, any entity controlled by Aloha, or Aloha's contractors knew or should have known.

43. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary for Aloha to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other

obligation. EPA will notify Aloha in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

44. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Aloha in writing of its decision.

45. If Aloha elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 20 Days after receipt of EPA's notice. In any such proceeding, Aloha shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Aloha complied with the requirements of Paragraphs 41 and 42. If Aloha carries this burden, the delay at issue shall be deemed not to be a violation by Aloha of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

46. 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. Aloha's failure to seek resolution of a dispute under this Section shall preclude Aloha from raising any such issue as a defense to an action by the United States to enforce any obligation of Aloha arising under this Decree.

47. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. A dispute shall be considered to have arisen when Aloha sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations

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

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

49. The United States shall serve its Statement of Position within 30 Days of receipt of Aloha's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Aloha unless Aloha files a motion for judicial review of the dispute in accordance with the following Paragraph.

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

Decree.

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

52. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 48 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules, or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Aloha shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 48, Aloha shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

53. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Aloha under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 37. If Aloha does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in

Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

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

(i) to monitor the progress of activities required under this Consent Decree;

(ii) to verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

(iii) to obtain samples and, upon request, splits of any samples by Aloha or its representatives, contractors, or consultants;

(iv) to obtain documentary evidence, including photographs and similar data; and

(v) to assess Aloha's compliance with this Consent Decree.

55. Upon request, Aloha shall provide EPA or its authorized representatives with splits of any samples taken by Aloha. Upon request, EPA shall provide Aloha splits of any samples taken by EPA.

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

States, Aloha shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

57. At the conclusion of the information-retention period provided in the preceding Paragraph, Aloha shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Aloha shall make available any such documents, records, or other information to EPA. Aloha may assert that certain documents, records, or other information is privileged under the attorney-client privilege, the work product doctrine, or any other privilege recognized by federal law. If Aloha asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Aloha. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

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

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

regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

60. This Consent Decree resolves the civil claims of the United States for the violations at the Hilo East Facility alleged in the Complaint filed in this action through the date of lodging. This Consent Decree also resolves the civil claims of the United States for any violations that stem from Aloha's failure to install Improved Containment at its other Aloha Facilities, as required by 40 C.F.R. 112.7(c). Other than the violations at the Hilo East Facility alleged in the Complaint and the violations that stem from Aloha's failure to install Improved Containment at its other Aloha Facilities, this Consent Decree in no way resolves any other CAA or CWA violation that has occurred or may be occurring at the Hilo East Facility or at the other Aloha Facilities.

61. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 60. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA or CWA, or their implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 60. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Aloha Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

62. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Aloha Facilities or Aloha's violations, Aloha shall not assert, and may not maintain, any defense or

claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 60.

63. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Aloha is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits, and Aloha'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 Aloha's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA or the CWA, or with any other provisions of federal, State, or local laws, regulations, or permits.

64. This Consent Decree does not limit or affect the rights of Aloha 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 Aloha, except as otherwise provided by law.

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

XII. COSTS

66. 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 Aloha under this Consent Decree.

XIII. NOTICES

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

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-10467

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-2-1-10467

As to the United States Environmental Protection Agency

Mark Sims
U.S. Environmental Protection Agency, Region IX (ENF-2-1)
75 Hawthorne Street
San Francisco, California 94105
Telephone: (415) 972-3965
Email: sims.mark@epa.gov

Peter Reich
Oil Enforcement Inspector (ENF3-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

As to Aloha Petroleum, Ltd.:

Robert Fung
Aloha Petroleum Ltd.
1132 Bishop Street, Suite 1700
Honolulu, HI 96813
Telephone: (808) 522-9754
Email: rfung@alohagas.com

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

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

XIV. EFFECTIVE DATE

70. 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; provided, however, that Aloha hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XV. RETENTION OF JURISDICTION

71. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

72. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by the United States and Aloha. Where

the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

73. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 52, 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).

XVII. TERMINATION

74. After Aloha has (i) completed the requirements of Section V (Compliance Requirements) of this Decree; (ii) received a Final Title V Permit for the Hilo East Facility for which it submitted an application for a modification in accordance with Paragraph 21 of this Decree, and such Final Title V Permit specifies NSPS A and NSPS XX as applicable requirements for any loading rack delivering liquid product into gasoline tank trucks and includes, but is not limited to, federally-enforceable terms and conditions that are at least as stringent as all of the terms and conditions included in Paragraph 14 of this Decree (regardless of whether the operations involving use of any loading rack at the Hilo East Facility is restarted in accordance with Paragraph 14); (iii) complied with all other requirements of this Consent Decree; and (iv) paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Aloha may serve upon the United States a Request for Termination, stating that Aloha has satisfied those requirements, together with all necessary supporting documentation.

75. Following receipt by the United States of Aloha's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Aloha has satisfactorily complied with the requirements for termination of

this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

76. If the United States does not agree that the Consent Decree may be terminated, Aloha may invoke Dispute Resolution under Section IX. However, Aloha shall not seek Dispute Resolution of any dispute regarding termination until 30 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

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

XIX. SIGNATORIES/SERVICE

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

79. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Aloha agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service

requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

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

XXI. FINAL JUDGMENT

81. 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 Aloha.

Dated and entered this ___ day of _____, 2015.

_____
UNITED STATES DISTRICT JUDGE

The UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States v. Aloha Petroleum Ltd. (D. Haw.):

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date _____ _____

PETER KAUTSKY
CLAIRE H. WOODS
Trial Attorneys
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Telephone: (202) 305-0402

FLORENCE T. NAKAKUNI
United States Attorney

RACHEL S. MORIYAMA
Assistant United States Attorney

The UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States v. Aloha Petroleum Ltd. (D. Haw.):

Date 11/24/15

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

The UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States v. Aloha Petroleum Ltd. (D. Haw.):

Date 11/24/15

JARED BLUMENFELD
Regional Administrator
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

J. ANDREW HELMINGER
THOMAS P. MINTZ
Assistant Regional Counsels
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

The UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States v. Aloha Petroleum, Ltd. (D. Haw.):

Date 10/1/15

RICHARD PARRY
President and Chief Executive Officer
Aloha Petroleum, Ltd.
1132 Bishop Street, Suite 1700
Honolulu, HI 96813

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

CSC Services of Hawaii, Inc.
1600 Pauahi Tower
1003 Bishop St.
Honolulu, Hawaii 96813