UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admits the jurisdictional allegations herein; however, the Respondents neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

ED_002427B_00006756-00002

11. The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. "Owner" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

13. "Operator" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

15. "Facility" is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA ID No. TSD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

ED_002427B_00006756-00003

19. The Respondent USET has an oil reclamation unit located on the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal destruction unit (TDU), as well as the feed preparation system that includes four mix tanks, a centrifuge, and a surge tank at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation operation was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Storing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

28. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Storage is defined in 30 T.A.C. § 335.1(143) (40 C.F.R. § 260.10) as "the holding of [hazardous] waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere."

30. On various dates between June 15, 2008 and the present, certain hazardous wastes were held in the tanks identified in Paragraph 20.

31. The hazardous waste identified in Paragraph 30 did not meet the definition of "recyclable materials" as that term is defined in 40 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

32. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 31.

33. The Respondents "stored" hazardous waste as that term is defined in 30 T.A.C. § 335.1(143) (40 C.F.R. § 260.10) in the tanks identified in Paragraph 20.

34. To date, neither the Respondent USET or Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste in the tanks identified in Paragraph 20.

ED_002427B_00006756-00005

35. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

36. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment)[1], storage, or disposal of hazardous waste.

37. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

38. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

39. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

40. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

41. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

---

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

ED_002427B_00006756-00006

42. On various dates between June 15, 2008 and the present, certain hazardous wastes were fed into the TDU that did not meet the definition of "recyclable materials" as that term is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

43. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 42.

44. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

45. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

ED_002427B_00006756-00007

46. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants and to remove them from the hazardous waste feed material, and transfers them to a gas treatment system using a nitrogen carrier gas. The oil is then recovered by condensing it in the gas treatment system. A process vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, and burned.

47. The separation of the organic contaminants from the hazardous waste in the indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

48. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

49. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a permit.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

50. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

51. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901

ED_002427B_00006756-00008

et seq."

52. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

53. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

54. The burning of the gas in the TDU's combustion chamber constitutes thermal processing (thermal treatment), as term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

55. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as

"any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

56. The TDU is an enclosed device that uses controlled flame combustion.

57. The TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

58. The TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] because it thermally processes (thermally treats) hazardous waste by burning the hazardous waste using controlled flame combustion.

59. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

60. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste in an unpermitted incinerator.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

61. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

62. Between on or about April 12, 2010 and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

ED_002427B_00006756-00010

63. The roll-off boxes identified in Paragraph 62 contained material which was destined for the TDU.

74. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

65. The roll-off boxes identified in Paragraph 62 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

66. To date, the Respondent USET has not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y".

67. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

III. COMPLIANCE ORDER

68. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

Commented [ELP1]: Do we need any additional operating requirements, such as feed rate, ppm concentration, inspections, etc.

Do we need any recordkeeping requirements?

1. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the TDU in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. § 264.351). All materials from the closure of the TDU are considered hazardous waste, and shall be disposed of in a

RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.

2. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the rolling bins for the oil reclamation unit in accordance with 30 T.A.C. § 335.152(a)(7) (40 C.F.R. § 264.178). All materials from closure of the rolling bins are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.

Commented [ELP2]: Are any other containers involved?

3. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the Shaker Deck Mix Tank, the 3 Mix Tanks, and the Centrifuge in the oil reclamation unit in accordance with 30 T.A.C. § 335.152(a)(8) (40 C.F.R. § 264.197). All materials from closure of the tanks are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.

Commented [ELP3]: Is the centrifuge a tank? Is this the correct list? Are there more?

IRL response states "four mix tanks, a centrifuge, and a surge tank"

Commented [ELP4]: Need to evaluate tanks to see if need permit - i.e., are the tanks integral to the recycling process?

4. Upon completion of the closure activities set forth in Section 81.A.1, 2, and 3 above, the Respondents shall notify EPA at least ten (10) days prior to the proposed re-start of the TDU. Unless otherwise notified by EPA, the Respondent may restart the TDU on the proposed re-start date.

5. Feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title

1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

6. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility.

7. Prior to restart of the TDU, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).

8. Prior to restart of the TDU, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 63.1209. The Respondents shall use either a carbon monoxide or hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use an oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen.

9. Prior to restart of the TDU, the Respondents shall submit to EPA and TCEQ applicable operating parameters for the TDU that the Respondents estimate will enable the TDU to meet a destruction and removal efficiency (DRE) of 99.99%. The operating parameters shall include, but are not limited to, maximum feed rate, maximum condenser outlet temperature, and minimum firebox temperature.

10. The Respondents shall operate the TDU in a manner that the one-hour and 12-hour rolling averages for the operating parameters are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(b).

11. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA. The Report shall include the following:

a. Identify the customer, the customer's SIC and NAICS code, copies of the relevant waste approval documents, and manifests for the previous six month period.

b. All deviations from the CEMS monitoring required by Paragraph 68.A.8.

c. All time periods in where there were deviations of the one-hour and 12-hour rolling averages of the operating parameters required under Paragraph 68.A.9.

The Report shall be submitted in an electronic format (i.e., compact disk). The Respondent may claim the report CBI, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within _____ days of the effective date of this CAFO, the Respondents shall submit to TCEQ, an application for a Class 3 RCRA Permit Modification, to permit the TDU as a Subpart O Incinerator Unit in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. A copy of the application shall also be submitted to EPA.

Commented [ELP5]: Any suggestions as to the time needed to prepare an application?

Commented [ELP6]: Does TD*X need to be on the permit application/permit, since they are the owner/operator of the TDU (which is located at the USET facility)?

Will they have to get a new separate permit because USET has the HW permit, and TD*X owns and operates the TDU on USET's property?

Commented [ELP7]: Harry & Kishor - I assume that permitting this new unit this would be a Class 3 modification? Is this correct?

Commented [ELP8]: How do we handle the coordination between TCEQ and EPA. Who will be involved with this?

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU and oil-reclamation facility, including the waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351).

3. The Respondents shall also request that the final RCRA permit also include the following:

a. The requirements of 40 C.F.R. Part 63, Subparts A and EEE;

b. The feedstock limitations set forth in Paragraph 68.F;

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers; and

Commented [ELP9]: Craig/Brad - Is this language sufficient?

d. Any risk-based terms and conditions necessary to protect human health and the environment in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ within the deadline set forth in Paragraph 68.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date.

5. By no later than _____ from the effective date of this CAFO, the Respondents must complete all permitting requirements and have a final RCRA permit authorizing it to operate the TDU. In the event that TCEQ does not issue a final RCRA permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP10]: Need a deadline

6. Upon the issuance of a Clean Air Act Title V permit to the Respondents and incorporation of the requirements of Subpart EEE for the TDU and the oil reclamation facility into the Title V permit, the requirements of Subpart EEE may be removed from the RCRA Permit upon request of the permittee(s).

C. Notice of Intent to Comply (NIC)/Public Participation

1. Within ___ days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b).

Commented [ELP11]: Any suggestion as to how long they need to do this?

2. The Respondents shall make the draft NIC available to the public upon issuance of the notice of public meeting pursuant to 40 C.F.R. § 63.1210(c)(3).

3. The Respondents shall provide notice to the public of a permit modification request pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)].

4. The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) days comment period. The information public meeting will also include information related to the risk burn set forth in Paragraph 60.F below.

5. The Respondents shall submit final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.

6. The failure to timely submit the final NIC no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.

D. Startup, Shutdown, and Malfunction Plan

1. Within ___ days of the effective date of this CAFO, the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and 63.1206(c)(2). The Respondents shall comply with any instructions or directives from TCEQ regarding approval, disapproval, or submission of any additional information.

Commented [ELP12]: Do we need any additional information?

E. Comprehensive Performance Test (CPT)

1. The Respondents shall perform a comprehensive performance test (CPT) as set forth below. The CPT is required to demonstrate compliance with the emissions standards of

40 C.F.R. Part 63, Subpart EEE, establish limits for the operating parameters provided by 40 C.F.R. § 61.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within ___ days of the effective date of this CAFO, the Respondents shall submit to TCEQ for approval a draft comprehensive performance test (CPT) plan pursuant to the requirements of 40 C.F.R. §§ 63.7 and 63.1207. The CPT plan will also provide for a performance test to determine the efficiency and operating parameters of the condensers from the Off-Gas Condensing Recovery System. A copy of the CPT Plan shall be submitted to EPA.

Commented [ELP13]: Any suggested time as to how long they need to complete the CPT plan?

Commented [ELP14]: Craig and Brad - Is this language sufficient?

3. The CPT should be integrated with the Risk Burn to produce a consistent set of proposed enforceable permit conditions.

4. The Respondents shall make the CPT plan available for public review upon issuance of the notice of NIC public meeting.

5. The Respondents shall implement the CPT Plan as approved by TCEQ, according to the schedule set forth therein. During the testing, the Respondents shall comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).

Commented [ELP15]: Does EPA want input regarding approval of the plan?

Commented [ELP16]: Do we want actual notice in case we want to observe?

Commented [ELP17]: Do we want a NLT date, in case they have a problem with the CPT?

6. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations), that they have exceeded any emission standard during a CPT for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except as provided in 40 C.F.R. § 63.1207(l)(1). The Respondents must make this determination within forty-five (45) days following completion of the CPT. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP18]: This section could be very tricky.

7. All analyses required by the CPT plan shall be performed by a laboratory pre-approved by TCEQ.

8. Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), within ninety (90) days from completion of the CPT, the Respondents shall submit a Notification of Compliance (NOC) to TCEQ and EPA documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under 40 C.F.R. § 63.1209. All data collected during the CPT (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to TCEQ and EPA along with the NOC.

9. As of the date of the submission of the NOC, the Respondent shall comply with all operating requirements of the NOC, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219.

10. The failure to timely submit an NOC to TCEQ and EPA within ninety (90) days from completion of the CPT shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP19]: This section could be very tricky.

F. Risk Burn

1. To collect emissions data for evaluation in a site-specific risk assessment, as part of its RCRA permit application for the TDU, within ___ days of the effective date of this CAFO, the Respondents must prepare and submit to TCEQ for approval, a risk burn plan in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. The risk burn plan shall

Commented [ELP20]: Do we need a site-specific risk assessment?

Commented [ELP21]: Any idea of how long they need to prepare a risk plan?

include a schedule for conducting the risk burn. A copy of the risk burn plan shall be submitted to EPA.

2. The risk burn should be integrated with the Comprehensive Performance Test to produce a consistent set of proposed enforceable permit conditions.

3. The Respondents shall implement the risk burn plan as approved by TCEQ, according to the schedule set forth therein.

Commented [ELP22]: Does EPA want input regarding approval of the plan?

4. All analyses required by the risk burn plan shall be performed by a laboratory pre-approved by TCEQ.

5. The risk burn performed by the Respondents shall collect fugitive and stack emissions data and define the operating requirements for the TDU based on control parameters identified in Chapters 4 through 7 of the Risk Burn Guidance for Hazardous Waste Combustion Facilities. During the risk burn, the Respondent shall evaluate each of the constituents in Chapters 4 through 7 of Risk Burn Guidance including the dioxins, furans, other organics, metals, particulate matter, hydrogen chloride, and chlorine identified therein.

6. During the risk burn (or as soon after the burn as is practicable), the Respondents shall make the determinations set forth for the Risk Burn Guidance for Hazardous Waste Combustion Facilities, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities deemed appropriate by the TCEQ. During the risk burn, the Respondent must demonstrate that the emissions from the TDU do not present a risk to human health or the environment.

7. Within ninety (90) days after completion of the risk burns, the Respondents must submit to TCEQ and EPA a certification that the risk burns have been carried out in accordance with the approved risk burn plans, and must submit the results of all the determinations by the

risk burn plan. The Respondents must also submit a complete and approvable Risk Assessment Report consistent with the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. All data collected during the risk burns must be submitted to TCEQ and EPA along with the certification.

8. A copy of the risk burn plan shall be made available to the public upon issuance of the notice of public meeting pursuant set forth in Paragraph 68.C.3 above.

9. The failure to timely submit a risk burn certification and the Risk Assessment Report to TCEQ and EPA within ninety (90) days from completion of the risk burn shall result in the termination of the Respondents' authorization to operate the TDU on that date. unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP23]: This section could be very tricky.

G. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site	213112	Support Activities for Oil and Gas Operations

	preparation and related construction activities performed on a contract or fee basis)		
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in its Final RCRA permit.

H. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart O – Incinerator Unit in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), and incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE

(unless those provisions have been incorporated into a Clean Air Act Title V permit) and the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA-R-05-006, September 2005.

2. The Respondents may seek relief under the provisions of Section IV.E of the CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

I. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925, 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subparts A and EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R. § 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.D of this CAFO.

J. Submissions

In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

69. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

70. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire

ED_002427B_00006756-00024

transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

71. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

72. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

ED_002427B_00006756-00026

73. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

74. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. STIPULATED PENALTIES

75. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 68.A.1, 2, 3, 4, 9, and 11, 68.C.1, 68.D.1, 68.E.2, and 68.F.1

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Restart Requirements – Paragraphs 68A.7 and 8

Period of Noncompliance	Penalty Per Violation Per Day

1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

76. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 70 herein. Interest and late charges shall be paid as stated in Paragraphs 72 - 73 herein.

77. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

D. DISPUTE RESOLUTION

78. If the Respondents object to any decision or directive of EPA in regard to Section III, the Respondents shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6

ED_002427B_00006756-00028

1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

79. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

80. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

81. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

E. FORCE MAJEURE

82. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO.

83. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents' first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.F of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondent from asserting any claim of force majeure.

84. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.G of this CAFO.

85. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event caused any delay the Respondents' claim was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event.

F. NOTIFICATION

86. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch

ED_002427B_00006756-00031

U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P. :

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

G. MODIFICATION

87. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

H. RETENTION OF ENFORCEMENT RIGHTS

88. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

ED_002427B_00006756-00032

89. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

90. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

91. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, other appropriate relief relating to this Facility, the Respondents 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 Complainant or 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 this CAFO.

92. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits.

ED_002427B_00006756-00033

The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant, does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

I. INDEMNIFICATION OF EPA

93. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

J. COSTS

94. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondents specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

K. TERMINATION

Commented [ELP24]: May need some work.

95. At such time as the Respondents believe they has completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have

ED_002427B_00006756-00034

been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

L. EFFECTIVE DATE

96. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____
TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

ED_002427B_00006756-00039

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

Field Code Changed

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admits the jurisdictional allegations herein; however, the Respondents neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

ED_002427B_00006758-00002

11. The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. "Owner" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

13. "Operator" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

15. "Facility" is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA ID No. TSD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

ED_002427B_00006758-00003

19. The Respondent USET has an oil reclamation unit located on the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal destruction unit (TDU), as well as the feed preparation system that includes four mix tanks, a centrifuge, and a surge tank at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation operation was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Storing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

28. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Storage is defined in 30 T.A.C. § 335.1(143) (40 C.F.R. § 260.10) as "the holding of [hazardous] waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere."

30. On various dates between June 15, 2008 and the present, certain hazardous wastes were held in the tanks identified in Paragraph 20.

31. The hazardous waste identified in Paragraph 30 did not meet the definition of "recyclable materials" as that term is defined in 40 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

32. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 31.

33. The Respondents "stored" hazardous waste as that term is defined in 30 T.A.C. § 335.1(143) (40 C.F.R. § 260.10) in the tanks identified in Paragraph 20.

34. To date, neither the Respondent USET or Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste in the tanks identified in Paragraph 20.

35. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

36. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment)[1], storage, or disposal of hazardous waste.

37. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

38. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

39. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

40. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

41. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

---

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

ED_002427B_00006758-00006

42. On various dates between June 15, 2008 and the present, certain hazardous wastes were fed into the TDU that did not meet the definition of "recyclable materials" as that term is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

43. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 42.

44. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

45. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

ED_002427B_00006758-00007

46. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants and to remove them from the hazardous waste feed material, and transfers them to a gas treatment system using a nitrogen carrier gas. The oil is then recovered by condensing it in the gas treatment system. A process vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, and burned.

47. The separation of the organic contaminants from the hazardous waste in the indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

48. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

49. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a permit.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

50. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

51. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as

ED_002427B_00006758-00008

amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

52. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

53. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

54. The burning of the gas in the TDU's combustion chamber constitutes thermal processing (thermal treatment), as term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

55. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as "any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

56. The TDU is an enclosed device that uses controlled flame combustion.

57. The TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

58. The TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] because it thermally processes (thermally treats) hazardous waste by burning the hazardous waste using controlled flame combustion.

59. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

60. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste in an unpermitted incinerator.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

61. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

ED_002427B_00006758-00010

62. Between on or about March 9, 2010 and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

63. The roll-off boxes identified in Paragraph 62 contained material which was destined for the TDU.

~~7~~64. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

65. The roll-off boxes identified in Paragraph 62 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

66. To date, the Respondent USET has not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y".

67. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

III. COMPLIANCE ORDER

68. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

~~1. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the TDU in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. § 264.351). All materials from the closure of the TDU are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.~~

~~2. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the rolling bins for the oil reclamation unit in accordance with 30 T.A.C. § 335.152(a)(7) (40 C.F.R. § 264.178). All materials from closure of the rolling bins are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.~~

~~3. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the Shaker Deck Mix Tank, the 3 Mix Tanks, and the Centrifuge in the oil reclamation unit in accordance with 30 T.A.C. § 335.152(a)(8) (40 C.F.R. § 264.197). All materials from closure of the tanks are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.~~

~~4. Upon completion of the closure activities set forth in Section 81.A.1, 2, and 3 above, the Respondents shall notify EPA at least ten (10) days prior to the proposed re-start of the TDU. Unless otherwise notified by EPA, the Respondent may restart the TDU on the proposed re-start date.~~

~~5~~1. As of the effective date of this CAFO, ~~F~~feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard

Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

~~6~~2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility.

~~7~~3. Within ninety (90) days of the effective date of this CAFO, ~~Prior to restart of the TDU,~~ the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).

~~8~~4. Within ninety (90) days of the effective date of this CAFO, ~~Prior to restart of the TDU,~~ the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 63.1209. The Respondents shall use ~~either~~ a carbon monoxide and a ~~or~~ hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use an oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen.

5~~9~~. Within ninety (90) days of the effective date of this CAFO, ~~Prior to restart of the TDU,~~ the Respondents shall submit to EPA and ~~EPA and~~ TCEQ applicable operating parameters for the TDU. ~~that the Respondents estimate will enable the TDU to meet a destruction and removal efficiency (DRE) of 99.99%. T~~The operating parameters shall include, but are not limited to, maximum feed rate, maximum condenser outlet temperature, and minimum firebox temperature.

~~10~~6. The Respondents shall operate the TDU in a manner that the one-hour and 12-hour rolling averages for the operating parameters are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(b).

~~11~~7. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA. The Report shall include the following:

a. Identify the customer, the customer's SIC and NAICS code, copies of the relevant waste approval documents, and manifests for the previous six month period.

b. All deviations from the CEMS monitoring required by Paragraph 68.A.~~8~~4.

c. All time periods in where there were deviations of the one-hour and 12-hour rolling averages of the operating parameters required under Paragraph 68.A.~~9~~6.

d. The initial Report shall include documentation showing the installation dates of the equipment required by Paragraphs 68.A.3 and 4.

The Report may ~~shall~~ be submitted in an electronic format (i.e., compact disk). The Respondent may claim the report as confidential business information, ~~CBI,~~ in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within ninety (90) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA, an application for a Class 3 RCRA Permit Modification~~,~~ to permit the TDU's combustion chamber as an incinerator under ~~as a~~ Subpart O ~~Incinerator Unit~~ in accordance with 30 T.A.C.
§ 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), the Risk Burn Guidance for Hazardous Waste Combustion

Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. **This permit application will serve as the Documentation of Compliance required by 40 C.F.R. § 63.1211(c).** ~~**A copy of the application shall also be submitted to EPA.**~~

Formatted: Font: Bold, Font color: Red

Formatted: Font: Bold, Font color: Red

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU and oil-reclamation facility, including the waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351).

3. The Respondents shall also request that the final RCRA permit also include the following:

a. The requirements of 40 C.F.R. Part 63, Subparts A and EEE;

b. The feedstock limitations set forth in Paragraph 68.~~F~~G;

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers; and

d. Any risk-based terms and conditions necessary to protect human health and the environment in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ and EPA within the deadline set forth in Paragraph 68.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date.

5. By no later than five hundred forty (540) days from the effective date of this CAFO, the Respondents must complete all permitting requirements and have a final RCRA Subpart O permit for the ~~authorizing it to operate the~~ TDU's combustion chamber. In the event that TCEQ and EPA do~~es~~ not issue a final RCRA Subpart O permit for the TDU's combustion chamber as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

6. Upon the issuance of a Clean Air Act Title V permit to the Respondents and incorporation of the requirements of Subpart EEE for the TDU and the oil reclamation facility into the Title V permit, the requirements of Subpart EEE may be removed from the RCRA Permit upon request of the permittee(s).

C. Notice of Intent to Comply (NIC)/Public Participation

1. Within ninety (90) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b), and an initial notification pursuant to 40 C.F.R. § 63.9(b).

2. The Respondents shall make the draft NIC available to the public upon issuance of the notice of public meeting pursuant to 40 C.F.R. § 63.1210(c)(3).

3. The Respondents shall provide notice to the public of a permit modification request pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)].

4. The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) days comment period. The

information public meeting will also include information related to the risk burn set forth in Paragraph 60.F below.

5. The Respondents shall submit to TCEQ and EPA the final NIC pursuant to 40 C.F.R. § 63.1210(b)(3)- no later than 60 days following the public meeting.

6. The failure to timely submit the final NIC to TCEQ and EPA no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.

D. Startup, Shutdown, and Malfunction Plan

1. Within one hundred twenty (120) ——days of the effective date of this CAFO, the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and 63.1206(c)(2). The Respondents shall comply with any instructions or directives from TCEQ regarding approval, disapproval, or submission of any additional information. A copy of the Startup, Shutdown, and Malfunction Plan shall also be submitted to EPA.

E. Comprehensive Performance Test (CPT)

1. The Respondents shall perform a comprehensive performance test (CPT) as set forth below. The CPT is required to demonstrate compliance with the emissions standards of 40 C.F.R. Part 63, Subpart EEE, establish limits for the operating parameters provided by 40 C.F.R. § 61.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within one hundred twenty (120) ——days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA for approval a ~~draft~~complete and approvable comprehensive performance test (CPT) plan pursuant to the requirements of 40 C.F.R. §§ 63.7

and 63.1207. The CPT plan will also provide for a performance test to determine the efficiency and operating parameters of the condensers from the Off-Gas Condensing Recovery System, the capture efficiency, destruction and removal efficiency, and the actual nature, pattern, and quantity of emissions from EPN EP-2, and any other fugitive or point source emissions of the TDU system capable of routing off-gas from the TDU to the atmosphere, including its air contaminant control systems, product recovery systems, and treated material handling system. ~~A copy of the CPT Plan shall be submitted to EPA.~~

3. The CPT should be integrated with the Risk Burn to produce a consistent set of proposed enforceable permit conditions.

4. The Respondents shall make the CPT plan available for public review upon issuance of the notice of NIC public meeting.

5. The Respondents shall implement the CPT Plan as approved by TCEQ and EPA, within ninety (90) days after approval of the CPT Plan, ~~according to the schedule set forth therein~~. During the testing, the Respondents shall comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).

6. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations), that they have exceeded any emission standard during a CPT for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except as provided in 40 C.F.R. § 63.1207(l)(1). The Respondents must make this determination within forty-five (45) days following completion of the CPT. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

7. All analyses required by the CPT plan shall be performed by a laboratory pre-approved by TCEQ.

8. Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), within ninety (90) days from completion of the CPT, the Respondents shall submit a Notification of Compliance (NOC) to TCEQ and EPA documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under 40 C.F.R. § 63.1209. All data collected during the CPT (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to TCEQ and EPA along with the NOC.

9. As of the date of the submission of the NOC, the Respondent shall comply with all operating requirements of the NOC, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219.

10. The failure to timely submit an NOC to TCEQ and EPA within ninety (90) days from completion of the CPT shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

F. Risk Burn

1. To collect emissions data for evaluation in a site-specific risk assessment, as part of its RCRA permit application for the TDU, within one hundred twenty (120) days of the effective date of this CAFO, the Respondents must prepare and submit to TCEQ and EPA for approval, a risk burn plan in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006,

September 2005. ~~The risk burn plan shall include a schedule for conducting the risk burn. A copy of the risk burn plan shall be submitted to EPA.~~

2. The risk burn should be integrated with the Comprehensive Performance Test to produce a consistent set of proposed enforceable permit conditions.

3. The Respondents shall implement the risk burn plan as approved by TCEQ and EPA within ninety (90) days after approval of the risk burn plan. ~~, according to the schedule set forth therein.~~

4. All analyses required by the risk burn plan shall be performed by a laboratory pre-approved by TCEQ.

5. The risk burn performed by the Respondents shall collect fugitive and stack emissions data and define the operating requirements for the TDU based on control parameters identified in Chapters 4 through 7 of the Risk Burn Guidance for Hazardous Waste Combustion Facilities. During the risk burn, the Respondent shall evaluate each of the constituents in Chapters 4 through 7 of Risk Burn Guidance including the dioxins, furans, other organics, metals, particulate matter, hydrogen chloride, and chlorine identified therein.

6. During the risk burn (or as soon after the burn as is practicable), the Respondents shall make the determinations set forth for the Risk Burn Guidance for Hazardous Waste Combustion Facilities, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities deemed appropriate by the TCEQ. During the risk burn, the Respondent must demonstrate that the emissions from the TDU do not present a risk to human health or the environment.

7. Within one hundred twenty (120) ~~ninety (90)~~ days after completion of the risk burns, the Respondents must submit to TCEQ and EPA a certification that the risk burns have been carried out in accordance with the approved risk burn plans, and must submit the results of all the determinations by the risk burn plan. The Respondents must also submit a complete and approvable Risk Assessment Report consistent with the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. All data collected during the risk burns must be submitted to TCEQ and EPA along with the certification.

8. A copy of the risk burn plan shall be made available to the public upon issuance of the notice of public meeting pursuant set forth in Paragraph 68.C.3 above.

9. The failure to timely submit a risk burn certification and the Risk Assessment Report to TCEQ and EPA within one hundred twenty (120) ~~ninety (90)~~ days from completion of the risk burn shall result in the termination of the Respondents' authorization to operate the TDU on that date. unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

G. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title

1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in its Final RCRA permit.

H. Submission, Revision, and Approval Process

1. For all applications or plans required be submitted to TCEQ and/or EPA approval under this CAFO, TCEQ/EPA will review these applications or plans and issue only one Notice of Deficiency (NOD) to the Respondents. The Respondents must provide an approvable response to TCEQ and EPA within thirty (30) days of receipt of the NOD. In the event that the Respondents fail to submit a timely and good-faith approvable NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline (thirty (30) days from the date of receipt of the NOD).

III. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU's combustion chamber as a Subpart O – Incinerator Unit in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), and incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE (unless those provisions have already been incorporated into a Clean Air Act Title V permit) and the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA-R-05-006, September 2005.

2. The Respondents may seek relief under the provisions of Section IV.E of the CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

IV. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925, 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subparts A and EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R. § 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.D of this CAFO.

JK. Submissions

In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

69. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

70. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

Formatted: Indent: First line: 0.5", Line spacing: single

For wire transfer, the payment should be remitted to:

Formatted: Indent: First line: 0.5", Line spacing: single

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

71. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

72. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

73. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

74. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. STIPULATED PENALTIES

75. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 68.A.~~1, 2, 3, 4,~~ 9, ~~and 11,~~ 68.C.1, 68.D.1, 68.E.2, and 68.F.1

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Certain Interim Operating ~~Restart~~ Requirements – Paragraphs 68A.~~7~~3, 4, and 5 ~~and 8~~

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

76. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 70 herein. Interest and late charges shall be paid as stated in Paragraphs 72 - 73 herein.

77. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

D. DISPUTE RESOLUTION

78. If the Respondents object to any decision or directive of EPA in regard to Section III, the Respondents shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

ED_002427B_00006758-00030

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

79. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

80. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

81. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

E. FORCE MAJEURE

82. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO.

83. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents' first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.F of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondent from asserting any claim of force majeure.

84. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations

affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.G of this CAFO.

85. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event caused any delay the Respondents' claim was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event.

F. NOTIFICATION

86. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P. :

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

G. MODIFICATION

87. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

H. RETENTION OF ENFORCEMENT RIGHTS

88. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

89. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

90. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

91. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, other appropriate relief relating to this Facility, the Respondents 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 Complainant or 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 this CAFO.

ED_002427B_00006758-00035

92. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant, does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

I. INDEMNIFICATION OF EPA

93. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

J. COSTS

94. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondents specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

K. TERMINATION

95. At such time as the Respondents believe they has completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary

ED_002427B_00006758-00036

documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

L. EFFECTIVE DATE

96. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

ED_002427B_00006758-00037

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____
US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____
TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct cop~~y~~ies of the CAFO ~~was~~ were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admits the jurisdictional allegations herein; however, the Respondents neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

ED_002427B_00006760-00002

11. The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. "Owner" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

13. "Operator" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

15. "Facility" is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA ID No. TSD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

ED_002427B_00006760-00003

19. The Respondent USET has an oil reclamation unit located on the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal destruction unit (TDU), as well as the feed preparation system that includes four mix tanks, a centrifuge, and a surge tank at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation operation was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Storing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

28. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Storage is defined in 30 T.A.C. § 335.1(143) (40 C.F.R. § 260.10) as "the holding of [hazardous] waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere."

30. On various dates between June 15, 2008 and the present, certain hazardous wastes were held in the tanks identified in Paragraph 20.

31. The hazardous waste identified in Paragraph 30 did not meet the definition of "recyclable materials" as that term is defined in 40 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

32. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 31.

33. The Respondents "stored" hazardous waste as that term is defined in 30 T.A.C. § 335.1(143) (40 C.F.R. § 260.10) in the tanks identified in Paragraph 20.

34. To date, neither the Respondent USET or Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste in the tanks identified in Paragraph 20.

35. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

36. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment)[1], storage, or disposal of hazardous waste.

37. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

38. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

39. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

40. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

41. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

---

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

ED_002427B_00006760-00006

42. On various dates between June 15, 2008 and the present, certain hazardous wastes were fed into the TDU that did not meet the definition of "recyclable materials" as that term is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

43. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 42.

44. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

45. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

ED_002427B_00006760-00007

46. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants and to remove them from the hazardous waste feed material, and transfers them to a gas treatment system using a nitrogen carrier gas. The oil is then recovered by condensing it in the gas treatment system. A process vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, and burned.

47. The separation of the organic contaminants from the hazardous waste in the indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

48. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

49. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a permit.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

50. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

51. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901

ED_002427B_00006760-00008

et seq."

52. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

53. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

54. The burning of the gas in the TDU's combustion chamber constitutes thermal processing (thermal treatment), as term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

55. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as

"any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

56. The TDU is an enclosed device that uses controlled flame combustion.

57. The TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

58. The TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] because it thermally processes (thermally treats) hazardous waste by burning the hazardous waste using controlled flame combustion.

59. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

60. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste in an unpermitted incinerator.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

61. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

62. Between on or about April 12, 2010 and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

63. The roll-off boxes identified in Paragraph 62 contained material which was destined for the TDU.

74. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

65. The roll-off boxes identified in Paragraph 62 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

66. To date, the Respondent USET has not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y".

67. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

III. COMPLIANCE ORDER

68. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

Commented [ELP1]: Do we need any additional operating requirements, such as feed rate, ppm concentration, inspections, etc.

Do we need any recordkeeping requirements?

1. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the TDU in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. § 264.351). All materials from the closure of the TDU are considered hazardous waste, and shall be disposed of in a

RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.

2. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the rolling bins for the oil reclamation unit in accordance with 30 T.A.C. § 335.152(a)(7) (40 C.F.R. § 264.178). All materials from closure of the rolling bins are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.

Commented [ELP2]: Are any other containers involved?

3. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the Shaker Deck Mix Tank, the 3 Mix Tanks, and the Centrifuge in the oil reclamation unit in accordance with 30 T.A.C. § 335.152(a)(8) (40 C.F.R. § 264.197). All materials from closure of the tanks are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.

Commented [ELP3]: Is the centrifuge a tank? Is this the correct list? Are there more?

IRL response states "four mix tanks, a centrifuge, and a surge tank"

Commented [ELP4]: Need to evaluate tanks to see if need permit - i.e., are the tanks integral to the recycling process?

4. Upon completion of the closure activities set forth in Section 81.A.1, 2, and 3 above, the Respondents shall notify EPA at least ten (10) days prior to the proposed re-start of the TDU. Unless otherwise notified by EPA, the Respondent may restart the TDU on the proposed re-start date.

5. Feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title

1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

6. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility.

7. Prior to restart of the TDU, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).

8. Prior to restart of the TDU, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 63.1209. The Respondents shall use either a carbon monoxide or hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use an oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen.

9. Prior to restart of the TDU, the Respondents shall submit to EPA and TCEQ applicable operating parameters for the TDU that the Respondents estimate will enable the TDU to meet a destruction and removal efficiency (DRE) of 99.99%. The operating parameters shall include, but are not limited to, maximum feed rate, maximum condenser outlet temperature, and minimum firebox temperature.

10. The Respondents shall operate the TDU in a manner that the one-hour and 12-hour rolling averages for the operating parameters are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(b).

11. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA. The Report shall include the following:

a. Identify the customer, the customer's SIC and NAICS code, copies of the relevant waste approval documents, and manifests for the previous six month period.

b. All deviations from the CEMS monitoring required by Paragraph 68.A.8.

c. All time periods in where there were deviations of the one-hour and 12-hour rolling averages of the operating parameters required under Paragraph 68.A.9.

The Report shall be submitted in an electronic format (i.e., compact disk). The Respondent may claim the report CBI, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within _____ days of the effective date of this CAFO, the Respondents shall submit to TCEQ, an application for a Class 3 RCRA Permit Modification, to permit the TDU as a Subpart O Incinerator Unit in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. A copy of the application shall also be submitted to EPA.

Commented [ELP5]: Any suggestions as to the time needed to prepare an application?

Commented [ELP6]: Does TD*X need to be on the permit application/permit, since they are the owner/operator of the TDU (which is located at the USET facility)?

Will they have to get a new separate permit because USET has the HW permit, and TD*X owns and operates the TDU on USET's property?

Commented [ELP7]: Harry & Kishor - I assume that permitting this new unit this would be a Class 3 modification? Is this correct?

Commented [ELP8]: How do we handle the coordination between TCEQ and EPA. Who will be involved with this?

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU and oil-reclamation facility, including the waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351).

3. The Respondents shall also request that the final RCRA permit also include the following:

a. The requirements of 40 C.F.R. Part 63, Subparts A and EEE;

b. The feedstock limitations set forth in Paragraph 68.F;

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers; and

Commented [ELP9]: Craig/Brad - Is this language sufficient?

d. Any risk-based terms and conditions necessary to protect human health and the environment in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ within the deadline set forth in Paragraph 68.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date.

5. By no later than _____ from the effective date of this CAFO, the Respondents must complete all permitting requirements and have a final RCRA permit authorizing it to operate the TDU. In the event that TCEQ does not issue a final RCRA permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP10]: Need a deadline

6. Upon the issuance of a Clean Air Act Title V permit to the Respondents and incorporation of the requirements of Subpart EEE for the TDU and the oil reclamation facility into the Title V permit, the requirements of Subpart EEE may be removed from the RCRA Permit upon request of the permittee(s).

C. Notice of Intent to Comply (NIC)/Public Participation

1. Within ___ days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b).

Commented [ELP11]: Any suggestion as to how long they need to do this?

2. The Respondents shall make the draft NIC available to the public upon issuance of the notice of public meeting pursuant to 40 C.F.R. § 63.1210(c)(3).

3. The Respondents shall provide notice to the public of a permit modification request pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)].

4. The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) days comment period. The information public meeting will also include information related to the risk burn set forth in Paragraph 60.F below.

5. The Respondents shall submit final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.

6. The failure to timely submit the final NIC no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.

D. Startup, Shutdown, and Malfunction Plan

1. Within ___ days of the effective date of this CAFO, the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and 63.1206(c)(2). The Respondents shall comply with any instructions or directives from TCEQ regarding approval, disapproval, or submission of any additional information.

Commented [ELP12]: Do we need any additional information?

E. Comprehensive Performance Test (CPT)

1. The Respondents shall perform a comprehensive performance test (CPT) as set forth below. The CPT is required to demonstrate compliance with the emissions standards of

40 C.F.R. Part 63, Subpart EEE, establish limits for the operating parameters provided by 40 C.F.R. § 61.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within ___ days of the effective date of this CAFO, the Respondents shall submit to TCEQ for approval a draft comprehensive performance test (CPT) plan pursuant to the requirements of 40 C.F.R. §§ 63.7 and 63.1207. The CPT plan will also provide for a performance test to determine the efficiency and operating parameters of the condensers from the Off-Gas Condensing Recovery System. A copy of the CPT Plan shall be submitted to EPA.

Commented [ELP13]: Any suggested time as to how long they need to complete the CPT plan?

Commented [ELP14]: Craig and Brad - Is this language sufficient?

3. The CPT should be integrated with the Risk Burn to produce a consistent set of proposed enforceable permit conditions.

4. The Respondents shall make the CPT plan available for public review upon issuance of the notice of NIC public meeting.

5. The Respondents shall implement the CPT Plan as approved by TCEQ, according to the schedule set forth therein. During the testing, the Respondents shall comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).

Commented [ELP15]: Does EPA want input regarding approval of the plan?

Commented [ELP16]: Do we want actual notice in case we want to observe?

Commented [ELP17]: Do we want a NLT date, in case they have a problem with the CPT?

6. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations), that they have exceeded any emission standard during a CPT for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except as provided in 40 C.F.R. § 63.1207(l)(1). The Respondents must make this determination within forty-five (45) days following completion of the CPT. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP18]: This section could be very tricky.

7. All analyses required by the CPT plan shall be performed by a laboratory pre-approved by TCEQ.

8. Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), within ninety (90) days from completion of the CPT, the Respondents shall submit a Notification of Compliance (NOC) to TCEQ and EPA documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under 40 C.F.R. § 63.1209. All data collected during the CPT (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to TCEQ and EPA along with the NOC.

9. As of the date of the submission of the NOC, the Respondent shall comply with all operating requirements of the NOC, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219.

10. The failure to timely submit an NOC to TCEQ and EPA within ninety (90) days from completion of the CPT shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP19]: This section could be very tricky.

F. Risk Burn

1. To collect emissions data for evaluation in a site-specific risk assessment, as part of its RCRA permit application for the TDU, within ___ days of the effective date of this CAFO, the Respondents must prepare and submit to TCEQ for approval, a risk burn plan in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. The risk burn plan shall

Commented [ELP20]: Do we need a site-specific risk assessment?

Commented [ELP21]: Any idea of how long they need to prepare a risk plan?

include a schedule for conducting the risk burn. A copy of the risk burn plan shall be submitted to EPA.

2. The risk burn should be integrated with the Comprehensive Performance Test to produce a consistent set of proposed enforceable permit conditions.

3. The Respondents shall implement the risk burn plan as approved by TCEQ, according to the schedule set forth therein.

Commented [ELP22]: Does EPA want input regarding approval of the plan?

4. All analyses required by the risk burn plan shall be performed by a laboratory pre-approved by TCEQ.

5. The risk burn performed by the Respondents shall collect fugitive and stack emissions data and define the operating requirements for the TDU based on control parameters identified in Chapters 4 through 7 of the Risk Burn Guidance for Hazardous Waste Combustion Facilities. During the risk burn, the Respondent shall evaluate each of the constituents in Chapters 4 through 7 of Risk Burn Guidance including the dioxins, furans, other organics, metals, particulate matter, hydrogen chloride, and chlorine identified therein.

6. During the risk burn (or as soon after the burn as is practicable), the Respondents shall make the determinations set forth for the Risk Burn Guidance for Hazardous Waste Combustion Facilities, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities deemed appropriate by the TCEQ. During the risk burn, the Respondent must demonstrate that the emissions from the TDU do not present a risk to human health or the environment.

7. Within ninety (90) days after completion of the risk burns, the Respondents must submit to TCEQ and EPA a certification that the risk burns have been carried out in accordance with the approved risk burn plans, and must submit the results of all the determinations by the

risk burn plan. The Respondents must also submit a complete and approvable Risk Assessment Report consistent with the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. All data collected during the risk burns must be submitted to TCEQ and EPA along with the certification.

8. A copy of the risk burn plan shall be made available to the public upon issuance of the notice of public meeting pursuant set forth in Paragraph 68.C.3 above.

9. The failure to timely submit a risk burn certification and the Risk Assessment Report to TCEQ and EPA within ninety (90) days from completion of the risk burn shall result in the termination of the Respondents' authorization to operate the TDU on that date. unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP23]: This section could be very tricky.

G. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site	213112	Support Activities for Oil and Gas Operations

	preparation and related construction activities performed on a contract or fee basis)		
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in its Final RCRA permit.

H. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart O – Incinerator Unit in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), and incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE

(unless those provisions have been incorporated into a Clean Air Act Title V permit) and the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA-R-05-006, September 2005.

2. The Respondents may seek relief under the provisions of Section IV.E of the CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

I. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925, 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subparts A and EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R. § 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.D of this CAFO.

J. Submissions

In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

69. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

70. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire

transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

71. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

72. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

ED_002427B_00006760-00026

73. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

74. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. STIPULATED PENALTIES

75. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 68.A.1, 2, 3, 4, 9, and 11, 68.C.1, 68.D.1, 68.E.2, and 68.F.1

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Restart Requirements – Paragraphs 68A.7 and 8

Period of Noncompliance	Penalty Per Violation Per Day

1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

76. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 70 herein. Interest and late charges shall be paid as stated in Paragraphs 72 - 73 herein.

77. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

D. DISPUTE RESOLUTION

78. If the Respondents object to any decision or directive of EPA in regard to Section III, the Respondents shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6

ED_002427B_00006760-00028

1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

79. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

80. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

81. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

E. FORCE MAJEURE

82. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO.

83. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents' first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.F of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondent from asserting any claim of force majeure.

84. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.G of this CAFO.

85. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event caused any delay the Respondents' claim was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event.

F. NOTIFICATION

86. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch

ED_002427B_00006760-00031

U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P. :

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

G. MODIFICATION

87. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

H. RETENTION OF ENFORCEMENT RIGHTS

88. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

89. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

90. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

91. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, other appropriate relief relating to this Facility, the Respondents 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 Complainant or 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 this CAFO.

92. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits.

ED_002427B_00006760-00033

The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant, does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

I. INDEMNIFICATION OF EPA

93. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

J. COSTS

94. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondents specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

K. TERMINATION

Commented [ELP24]: May need some work.

95. At such time as the Respondents believe they has completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have

ED_002427B_00006760-00034

been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

L. EFFECTIVE DATE

96. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____
TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____ _____

John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

ED_002427B_00006760-00039

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 Ross Avenue
Dallas, Texas 75202-2733

April XX, 2012

CONFIDENTIAL SETTLEMENT COMMUNICATION

Via e-mail – mreagan@mcginnislaw.com & jdhead@fbhh.com

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Dear Mary & J.D.:

As you know, back on March 15, 2012, EPA informed U.S. Ecology Texas, Inc. (USET) and TD*X Associates, L.P. (TD*X), that it planned to file an administrative complaint alleging, among other things, that USET and TD*X were operating an incinerator without a RCRA permit. Shortly thereafter, officials from USET and/or TD*X contacted EPA management, asking that parties engage in pre-filing negotiations in an attempt to settle this case without filing an administrative complaint. EPA agreed to this request. We subsequently met on April 11, 2012, where USET and TD*X presented two alternatives which they hoped would allow the operation of the TDU without a RCRA permit, or alternatively, with a Subpart X permit.

We have reviewed your proposed alternatives to either classify the TDU as a distillation unit, or to install a carbon absorber prior to the combustion chamber. Neither of these proposals would allow operation of the TDU without a RCRA Subpart O permit. We don't agree that the TDU is a distillation unit because **[need someone to fill this in]**. Also, the installation of a carbon absorber would just be another treatment step prior to the treatment of the hazardous waste in the combustion chamber. Therefore, the only option left is a RCRA Subpart O permit.

Given EPA's position that a Subpart O permit is required, and USET and TD*X's reluctance to obtain a Subpart O permit, the question that remains is whether USET and TD*X are willing to negotiate a consent agreement and final order (CAFO) with such an outcome. We have not received such assurances. I have attached a CAFO which sets forth the terms that EPA believes are necessary to settle this case in accordance with RCRA. Please review this CAFO and let us know by **[any suggestions?]** whether you are willing to negotiate in good faith a CAFO which would require the parties to obtain a RCRA Subpart O permit for the combustion

chamber of the thermal desorption unit (TDU). If we do not receive such assurances, then obviously there is no reason to waste everyone's time. If one party is willing and the other is not, the question that then needs to be asked whether that one party would be able to meet the requirements of the CAFO without the other party.

Obviously, there are a number of factors that you would have to consider. We would like you consider the following. First, the only substantive difference between a RCRA Subpart O and a Subpart X permit would be that a Subpart O permit requires that you obtain a Clean Air Act Title V permit. Given that a Title V permit imposes no new substantive requirements, there would be very little difference in how the parties operate the oil reclamation unit other than some reporting requirements. Second, assuming that EPA is successful in convincing an ALJ that a Subpart O permit is required, would the relief that is rewarded be flexible enough to address changing circumstances? I seriously doubt that the relief awarded would include provisions such as dispute resolution and force majeure. You would be better able to negotiate the timing of the submittals with EPA, as opposed to a judge potentially splitting the difference or siding with EPA's proposed deadline.

A. Compliance Order

The enclosed draft CAFO sets forth a compliance order that allows operation of the TDU under certain conditions pending the processing of the RCRA permit and related activities. There are four major parts of this Compliance Order:

1. Interim Operating Requirements – These requirement include restrictions on feedstock, interim operating limits, installation and operation of certain equipment required by 40 C.F.R. Part 63, Subpart EEE, and reporting requirements.

2. RCRA Permit Modification – This section requires the submission of a Class 3 RCRA Permit Modification to permit the TDU's combustion chamber as a Subpart O Incinerator. The permit modification is also required to include the requirements of 40 C.F.R. Part 63, Subparts A and EEE.

3. Subpart EEE Requirements – The Subpart EEE requirements are broken down into three parts: Section C - Notice of Intent to Comply (NIC)/Public Participation, Section D – Startup, Shutdown, and Malfunction Plan, and Section E – Comprehensive Performance Test (CPT). The CPT will also include a performance test to determine the efficiency and operating parameters of the condensers. Please note that you will need to obtain a Clean Air Act Title V permit because of the applicability of Subpart EEE, even if you are not a major source. 40 C.F.R. § 63.1200(a).

4. Risk Burn – This provision requires the performance of a risk burn, which will be used for the site-specific risk assessment, which will be submitted to determine whether risk-based terms and conditions are need to be added to the permit to protect human health and the environment. We believe that a risk assessment is necessary because of the expected high public interest in this permit modification, along with **[need explanation]**.

ED_002427B_00006767-00002

As we told you at our last meeting, a copy of the Compliance Order portion of the CAFO was sent to TCEQ for their review. We will be working with them to refine this portion of the CAFO, if needed.

B. Time Frame

In order for a CAFO to be enforceable, it must have a date certain that the parties are in compliance. Therefore, we cannot have an open-ended CAFO. At some point, the parties must have received a RCRA permit or hazardous waste activities must be terminated. A timeline with the deadlines from the CAFO and estimated review time is attached as Enclosure A.

C. Violations

Because we have not spent a lot of time specifically discussing the violations, I have provided a brief explanation of each violation below:

Count One – Storage of Hazardous Waste without a Permit. I mentioned this count to Mary, but I don't believe I mentioned it to J.D. USET and TD*X received hazardous waste that was not "oil-bearing hazardous waste from petroleum refining, production, or transportation practices" (petroleum industry waste) such as waste from chemical plants. As such, the recycling exemption in 40 C.F.R. § 261.6(a)(3)(iv)(C) would not apply. Therefore, placement of non-petroleum industry hazardous waste in the tanks in the oil reclamation unit would constitute storage of hazardous waste without a permit.

Count Two – Processing[1] of Hazardous Waste without a Permit. This Count applies to the shipments of non-petroleum industry waste that were fed into the TDU (see Count 1 above). The separation of organic contaminants from the hazardous waste in the TDU constitutes processing. Since the recycling exemption in 40 C.F.R. § 261.6(a)(3)(iv)(C) does not extend to non-petroleum industry waste, USET and TD*X processed hazardous waste in the TDU without a permit. Since treatment took place in the TDU, this violation is unrelated to the burning of the non-condensed gases in the combustion chamber of the TDU. No penalty is assessed for this violation, since it would be covered by Count 3.

Count Three – Processing of Hazardous Waste without a Permit. This violation involves the burning of the noncondensable gases in the combustion chamber of the TDU from all of the hazardous waste fed into the TDU, irrespective of whether the feedstock was petroleum industry waste.

Count Four – Storage of Hazardous Waste without a Permit. This violation covers the roll-off boxes of hazardous waste stored in the area of the facility called the "Y" from March 9, 2010 through June 11, 2010. In USET's June 29, 2011 letter, USET claimed the following:

[1] Texas uses the term "processing" in place of treatment.

> The use of the "Y" was to stage "in-process" waste that had entered, but not completed, the oil reclamation process. For example, initial separation of liquids from oil sludge may have been completed on a waste stream upon arrival at the facility. Subsequently, the sludge may have been placed at the "Y" awaiting further processing in the TDU. Since the waste had entered a reclamation process that is not regulated under parts 262 through 266, the requirements under 40 C.F.R. § 262.34, referenced by EPA as their concern, would not apply to these containers.

June 29, 2011 letter at 4 – 5.

However, storage of hazardous waste prior to recycling is regulated. 40 C.F.R. § 261.6(c)(1). One cannot claim that a waste is "in process" when it started recycling process (e.g., initial separation of liquids from oily sludge), then place the sludge in a roll-off box elsewhere for over a month, and then return it to the TDU to be processed. Once the waste left the oil reclamation process, it was required to be stored in a permitted storage area.

D. Penalty Calculations

We have calculated a proposed penalty of $1,385,457. Counts 1 – 3 – ($1,212,027) apply to both USET and TD*X, to be split between the two parties as they see fit. Count 4 ($173,430) only applies to USET.

Count 1 – $ 343,710
Count 2 – Included in Count 3
Count 3 – $ 868,317
Count 4 – $ 173,430

Total $1,385,457

I have enclosed a copy of the penalty calculation worksheets and the 2003 RCRA Civil Penalty Policy.

We did not make any upfront adjustments to the penalty. We could have increased the penalty calculations for willfulness/negligence because of the non-petroleum industry wastes that were used as feedstock. It is clear that such wastes as chemical plant wastes would not be considered as petroleum industry wastes [see 40 C.F.R. § 261.4(a)(12)(ii)]. Likewise, we could have increased the penalties for history of noncompliance, given the 2009 and 2010 Agreed Orders with TCEQ, but chose not to. If this case goes to hearing, EPA reserves the right to include these adjustments, but also any others it feels is appropriate. EPA also reserves the right to include additional violations that are not cited here.

As to the economic benefit component in Count Three, we used the BEN model, which is a free download available on EPA's website at http://www.epa.gov/compliance/civil/econmodels/. The economic benefit was calculated to be $73,757. This is a delayed cost, since the parties will conduct the appropriate testing and pay the applicable permit fees. If for

some reason testing and a permit is not needed, the economic benefit would be an avoided cost, or $296,303. The inputs for the economic benefit were $4,000 for permitting fees paid to TCEQ, $10,923 for permitting an additional unit (25% of the general facility requirements permitting costs), and $326,584 for testing, for a total of $341,507. These figures came from tables in the 1997 Document entitled "Estimating Costs for Economic Benefit of RCRA Noncompliance" (copy enclosed). We used the typical cost estimate for these activities, as opposed to a lower figure or higher figure. This number ($341,507) was inputted as a one-time, nondepreciable expenditure. The cost estimate date was April 16, 2012, June 15, 2008 was used as the noncompliance date, and the penalty due date was June 1, 2012. The BEN calculations for both the delayed cost and avoided cost estimates are included as part of the penalty calculation worksheets. Finally, I have enclosed an electronic cop of 40 C.F.R. Part 22, which governs the terms and conditions of the CAFO.

If you have any questions, please feel free to call me at (214) 665-8074.

Sincerely,

Evan L. Pearson
Senior Enforcement Counsel

Enclosures
- CAFO Time Line
- Draft CAFO
- Draft Penalty Calculations
- RCRA Civil Penalty Policy
- TCEQ Permitting Fees
- Estimating Costs for Economic Benefit of RCRA Noncompliance
- 40 C.F.R. Part 22

ENCLOSURE A

CAFO TIME LINE WITH DEADLINES AND ESTIMATED APPROVAL TIME[1]

All dates are calculated from the effective date of the CAFO

1. **Immediately**

   a. Waste feedstock limitations - ¶ 68.A.1

2. **Within 90 days (3 months)**

   a. Install automatic hazardous waste feed cutoff - ¶ 68.A.3
   b. Install continuous emissions monitors - ¶ 68.A.4
   c. Operating parameters for TDU - ¶ 68.A.5
   d. Submit Class 3 RCRA permit modification - ¶ 68.B.1
   e. Submit draft Notice of Intent to Comply and Initial Notification - ¶ 68.C.1

3. **Within 120 days (4 months)**

   a. Startup, Shutdown, and Malfunction Plan - ¶ 68.D.1
   b. Comprehensive Performance Test Plan - ¶ 68.E.2
   c. Risk Burn Plan - ¶ 68.F.1

4. **Within 390 days (13 months) (expected to take up to 270 days (9 months) to review and approve plans)**

   Approval of CPT and Risk Burn Plans

5. **Within 480 days (16 months) (or 90 days after approval of CPT and Risk Burn Plans)**

   Conduct CPT test and risk burn - ¶¶ 68.E.5 and 68.F.3

6. **Within 570 days (19 months) (or 90 days after completion of CPT test)**

   Submit NOC - ¶ 68.E.8

7. **Within 600 days (19 months) (or 120 days after risk burn)**

   Submit Risk Burn Certification and Risk Assessment Report - ¶ 68.F.7

8. **No later than 2 ½ years (30 months)**

---

[1] The public meeting and submission of Final NIC requirements (¶ 68.C.4 and 5) are not included in this time frame since they are not tied to a specific deadline.

RCRA Permit Decision - ¶ 68.B.5

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admits the jurisdictional allegations herein; however, the Respondents neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

ED_002427B_00006770-00002

11. The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. "Owner" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

13. "Operator" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

15. "Facility" is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA ID No. TSD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

ED_002427B_00006770-00003

19. The Respondent USET has an oil reclamation unit located on the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal destruction unit (TDU), as well as the feed preparation system that includes four mix tanks, a centrifuge, and a surge tank at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation operation was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Storing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

28. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Storage is defined in 30 T.A.C. § 335.1(143) (40 C.F.R. § 260.10) as "the holding of [hazardous] waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere."

30. On various dates between June 15, 2008 and the present, certain hazardous wastes were held in the tanks identified in Paragraph 20.

31. The hazardous waste identified in Paragraph 30 did not meet the definition of "recyclable materials" as that term is defined in 40 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

32. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 31.

33. The Respondents "stored" hazardous waste as that term is defined in 30 T.A.C. § 335.1(143) (40 C.F.R. § 260.10) in the tanks identified in Paragraph 20.

34. To date, neither the Respondent USET or Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste in the tanks identified in Paragraph 20.

35. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

36. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment)[1], storage, or disposal of hazardous waste.

37. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

38. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

39. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

40. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

41. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

---

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

ED_002427B_00006770-00006

42. On various dates between June 15, 2008 and the present, certain hazardous wastes were fed into the TDU that did not meet the definition of "recyclable materials" as that term is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

43. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 42.

44. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

45. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

ED_002427B_00006770-00007

46. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants and to remove them from the hazardous waste feed material, and transfers them to a gas treatment system using a nitrogen carrier gas. The oil is then recovered by condensing it in the gas treatment system. A process vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, and burned.

47. The separation of the organic contaminants from the hazardous waste in the indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

48. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

49. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a permit.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

50. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

51. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901

ED_002427B_00006770-00008

et seq."

52. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

53. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

54. The burning of the gas in the TDU's combustion chamber constitutes thermal processing (thermal treatment), as term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

55. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as

"any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

56. The TDU is an enclosed device that uses controlled flame combustion.

57. The TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

58. The TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] because it thermally processes (thermally treats) hazardous waste by burning the hazardous waste using controlled flame combustion.

59. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

60. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste in an unpermitted incinerator.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

61. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

62. Between on or about April 12, 2010 and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

63. The roll-off boxes identified in Paragraph 62 contained material which was destined for the TDU.

74. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

65. The roll-off boxes identified in Paragraph 62 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

66. To date, the Respondent USET has not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y".

67. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

III. COMPLIANCE ORDER

68. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

Commented [ELP1]: Do we need any additional operating requirements, such as feed rate, ppm concentration, inspections, etc.

Do we need any recordkeeping requirements?

1. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the TDU in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. § 264.351). All materials from the closure of the TDU are considered hazardous waste, and shall be disposed of in a

RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.

2. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the rolling bins for the oil reclamation unit in accordance with 30 T.A.C. § 335.152(a)(7) (40 C.F.R. § 264.178). All materials from closure of the rolling bins are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.

Commented [ELP2]: Are any other containers involved?

Commented [eks3]: Based on the information received from USET/TDX the material can be received in vacuum boxes or drums that are that are "normally" unloaded and received in the reclamation area without any intermim storage. However, if they are stored they are placed in the "US Ecology RCRA permitted storage area.

3. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the Shaker Deck Mix Tank, the 3 Mix Tanks, and the Centrifuge in the oil reclamation unit in accordance with 30 T.A.C. § 335.152(a)(8) (40 C.F.R. § 264.197). All materials from closure of the tanks are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.

Commented [ELP4]: Is the centrifuge a tank? Is this the correct list? Are there more?

IRL response states "four mix tanks, a centrifuge, and a surge tank"

Commented [ELP5]: Need to evaluate tanks to see if need permit - i.e., are the tanks integral to the recycling process?

Commented [eks6]: Based on the information submitted by the facility there is a Shaker Tank (T-30), 3 mix tanks (T-31-33) a Surge Tank (T-34) and the centrifuge.

Commented [eks7]: Although, the facilities did not provide a specific description of the centrifuge, based on the processing information provided I believe that it would meet the definition of a tank.

Commented [eks8]: Based on information received from USET/TDX the tanks appear to be integral to recycling process.

4. Upon completion of the closure activities set forth in Section 81.A.1, 2, and 3 above, the Respondents shall notify EPA at least ten (10) days prior to the proposed re-start of the TDU. Unless otherwise notified by EPA, the Respondent may restart the TDU on the proposed re-start date.

5. Feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title

1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

6. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility.

7. Prior to restart of the TDU, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).

8. Prior to restart of the TDU, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 63.1209. The Respondents shall use either a carbon monoxide or hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use an oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen.

9. Prior to restart of the TDU, the Respondents shall submit to EPA and TCEQ applicable operating parameters for the TDU that the Respondents estimate will enable the TDU to meet a destruction and removal efficiency (DRE) of 99.99%. The operating parameters shall include, but are not limited to, maximum feed rate, maximum condenser outlet temperature, and minimum firebox temperature.

10. The Respondents shall operate the TDU in a manner that the one-hour and 12-hour rolling averages for the operating parameters are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(b).

11. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA. The Report shall include the following:

a. Identify the customer, the customer's SIC and NAICS code, copies of the relevant waste approval documents, and manifests for the previous six month period.

b. All deviations from the CEMS monitoring required by Paragraph 68.A.8.

c. All time periods in where there were deviations of the one-hour and 12-hour rolling averages of the operating parameters required under Paragraph 68.A.9.

The Report shall be submitted in an electronic format (i.e., compact disk). The Respondent may claim the report CBI, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within _____ days of the effective date of this CAFO, the Respondents shall submit to TCEQ, an application for a Class 3 RCRA Permit Modification, to permit the TDU as a Subpart O Incinerator Unit in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. A copy of the application shall also be submitted to EPA.

Commented [ELP9]: Any suggestions as to the time needed to prepare an application?

Commented [ELP10]: Does TD*X need to be on the permit application/permit, since they are the owner/operator of the TDU (which is located at the USET facility)?

Will they have to get a new separate permit because USET has the HW permit, and TD*X owns and operates the TDU on USET's property?

Commented [ELP11]: Harry & Kishor - I assume that permitting this new unit this would be a Class 3 modification? Is this correct?

Commented [ELP12]: How do we handle the coordination between TCEQ and EPA. Who will be involved with this?

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU and oil-reclamation facility, including the waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351).

3. The Respondents shall also request that the final RCRA permit also include the following:

a. The requirements of 40 C.F.R. Part 63, Subparts A and EEE;

b. The feedstock limitations set forth in Paragraph 68.F;

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers; and

Commented [ELP13]: Craig/Brad - Is this language sufficient?

d. Any risk-based terms and conditions necessary to protect human health and the environment in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ within the deadline set forth in Paragraph 68.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date.

5. By no later than _____ from the effective date of this CAFO, the Respondents must complete all permitting requirements and have a final RCRA permit authorizing it to operate the TDU. In the event that TCEQ does not issue a final RCRA permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP14]: Need a deadline

6. Upon the issuance of a Clean Air Act Title V permit to the Respondents and incorporation of the requirements of Subpart EEE for the TDU and the oil reclamation facility into the Title V permit, the requirements of Subpart EEE may be removed from the RCRA Permit upon request of the permittee(s).

C. Notice of Intent to Comply (NIC)/Public Participation

1. Within ___ days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b).

Commented [ELP15]: Any suggestion as to how long they need to do this?

2. The Respondents shall make the draft NIC available to the public upon issuance of the notice of public meeting pursuant to 40 C.F.R. § 63.1210(c)(3).

3. The Respondents shall provide notice to the public of a permit modification request pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)].

4. The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) days comment period. The information public meeting will also include information related to the risk burn set forth in Paragraph 60.F below.

5. The Respondents shall submit final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.

6. The failure to timely submit the final NIC no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.

D. Startup, Shutdown, and Malfunction Plan

1. Within ___ days of the effective date of this CAFO, the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and 63.1206(c)(2). The Respondents shall comply with any instructions or directives from TCEQ regarding approval, disapproval, or submission of any additional information.

Commented [ELP16]: Do we need any additional information?

E. Comprehensive Performance Test (CPT)

1. The Respondents shall perform a comprehensive performance test (CPT) as set forth below. The CPT is required to demonstrate compliance with the emissions standards of

40 C.F.R. Part 63, Subpart EEE, establish limits for the operating parameters provided by 40 C.F.R. § 61.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within ___ days of the effective date of this CAFO, the Respondents shall submit to TCEQ for approval a draft comprehensive performance test (CPT) plan pursuant to the requirements of 40 C.F.R. §§ 63.7 and 63.1207. The CPT plan will also provide for a performance test to determine the efficiency and operating parameters of the condensers from the Off-Gas Condensing Recovery System. A copy of the CPT Plan shall be submitted to EPA.

Commented [ELP17]: Any suggested time as to how long they need to complete the CPT plan?

Commented [ELP18]: Craig and Brad - Is this language sufficient?

3. The CPT should be integrated with the Risk Burn to produce a consistent set of proposed enforceable permit conditions.

4. The Respondents shall make the CPT plan available for public review upon issuance of the notice of NIC public meeting.

5. The Respondents shall implement the CPT Plan as approved by TCEQ, according to the schedule set forth therein. During the testing, the Respondents shall comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).

Commented [ELP19]: Does EPA want input regarding approval of the plan?

Commented [ELP20]: Do we want actual notice in case we want to observe?

Commented [ELP21]: Do we want a NLT date, in case they have a problem with the CPT?

6. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations), that they have exceeded any emission standard during a CPT for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except as provided in 40 C.F.R. § 63.1207(l)(1). The Respondents must make this determination within forty-five (45) days following completion of the CPT. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP22]: This section could be very tricky.

7. All analyses required by the CPT plan shall be performed by a laboratory pre-approved by TCEQ.

8. Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), within ninety (90) days from completion of the CPT, the Respondents shall submit a Notification of Compliance (NOC) to TCEQ and EPA documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under 40 C.F.R. § 63.1209. All data collected during the CPT (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to TCEQ and EPA along with the NOC.

9. As of the date of the submission of the NOC, the Respondent shall comply with all operating requirements of the NOC, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219.

10. The failure to timely submit an NOC to TCEQ and EPA within ninety (90) days from completion of the CPT shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP23]: This section could be very tricky.

F. Risk Burn

1. To collect emissions data for evaluation in a site-specific risk assessment, as part of its RCRA permit application for the TDU, within ___ days of the effective date of this CAFO, the Respondents must prepare and submit to TCEQ for approval, a risk burn plan in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. The risk burn plan shall

Commented [ELP24]: Do we need a site-specific risk assessment?

Commented [ELP25]: Any idea of how long they need to prepare a risk plan?

include a schedule for conducting the risk burn. A copy of the risk burn plan shall be submitted to EPA.

2. The risk burn should be integrated with the Comprehensive Performance Test to produce a consistent set of proposed enforceable permit conditions.

3. The Respondents shall implement the risk burn plan as approved by TCEQ, according to the schedule set forth therein.

Commented [ELP26]: Does EPA want input regarding approval of the plan?

4. All analyses required by the risk burn plan shall be performed by a laboratory pre-approved by TCEQ.

5. The risk burn performed by the Respondents shall collect fugitive and stack emissions data and define the operating requirements for the TDU based on control parameters identified in Chapters 4 through 7 of the Risk Burn Guidance for Hazardous Waste Combustion Facilities. During the risk burn, the Respondent shall evaluate each of the constituents in Chapters 4 through 7 of Risk Burn Guidance including the dioxins, furans, other organics, metals, particulate matter, hydrogen chloride, and chlorine identified therein.

6. During the risk burn (or as soon after the burn as is practicable), the Respondents shall make the determinations set forth for the Risk Burn Guidance for Hazardous Waste Combustion Facilities, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities deemed appropriate by the TCEQ. During the risk burn, the Respondent must demonstrate that the emissions from the TDU do not present a risk to human health or the environment.

7. Within ninety (90) days after completion of the risk burns, the Respondents must submit to TCEQ and EPA a certification that the risk burns have been carried out in accordance with the approved risk burn plans, and must submit the results of all the determinations by the

risk burn plan. The Respondents must also submit a complete and approvable Risk Assessment Report consistent with the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. All data collected during the risk burns must be submitted to TCEQ and EPA along with the certification.

8. A copy of the risk burn plan shall be made available to the public upon issuance of the notice of public meeting pursuant set forth in Paragraph 68.C.3 above.

9. The failure to timely submit a risk burn certification and the Risk Assessment Report to TCEQ and EPA within ninety (90) days from completion of the risk burn shall result in the termination of the Respondents' authorization to operate the TDU on that date. unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP27]: This section could be very tricky.

G. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site	213112	Support Activities for Oil and Gas Operations

	preparation and related construction activities performed on a contract or fee basis)		
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in its Final RCRA permit.

H. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart O – Incinerator Unit in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), and incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE

(unless those provisions have been incorporated into a Clean Air Act Title V permit) and the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA-R-05-006, September 2005.

2. The Respondents may seek relief under the provisions of Section IV.E of the CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

I. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925, 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subparts A and EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R. § 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.D of this CAFO.

J. Submissions

In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

69. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

70. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire

ED_002427B_00006770-00024

transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

71. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

72. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

ED_002427B_00006770-00026

73. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

74. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. STIPULATED PENALTIES

75. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 68.A.1, 2, 3, 4, 9, and 11, 68.C.1, 68.D.1, 68.E.2, and 68.F.1

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Restart Requirements – Paragraphs 68A.7 and 8

Period of Noncompliance	Penalty Per Violation Per Day

1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

76. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 70 herein. Interest and late charges shall be paid as stated in Paragraphs 72 - 73 herein.

77. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

D. DISPUTE RESOLUTION

78. If the Respondents object to any decision or directive of EPA in regard to Section III, the Respondents shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6

ED_002427B_00006770-00028

1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

79. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

80. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

81. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

E. FORCE MAJEURE

82. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO.

83. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents' first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.F of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondent from asserting any claim of force majeure.

84. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.G of this CAFO.

85. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event caused any delay the Respondents' claim was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event.

F. NOTIFICATION

86. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch

ED_002427B_00006770-00031

U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P. :

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

G. MODIFICATION

87. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

H. RETENTION OF ENFORCEMENT RIGHTS

88. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

ED_002427B_00006770-00032

89. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

90. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

91. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, other appropriate relief relating to this Facility, the Respondents 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 Complainant or 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 this CAFO.

92. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits.

The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant, does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

I. INDEMNIFICATION OF EPA

93. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

J. COSTS

94. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondents specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

K. TERMINATION

Commented [ELP28]: May need some work.

95. At such time as the Respondents believe they has completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have

ED_002427B_00006770-00034

been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

L. EFFECTIVE DATE

96. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____
TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

ED_002427B_00006770-00039

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admits the jurisdictional allegations herein; however, the Respondents neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

11. The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. "Owner" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

13. "Operator" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

15. "Facility" is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA ID No. TSD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

19. The Respondent USET has an oil reclamation unit located on the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal destruction unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30) three mix tanks (T-31, T-32, and T-33), a centrifuge, and a surge tank (T-34) at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation operation was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Processing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), [1] storage, or disposal of hazardous waste.

24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

28. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

30. On various dates between June 15, 2008 and the present, certain hazardous wastes were processed in the tanks identified in Paragraph 20.

31. The hazardous waste identified in Paragraph 30 did not meet the definition of "recyclable materials" as that term is defined in 40 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]

because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

32. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraphs 30 - 31.

33. The Respondents "processed" (treated) hazardous waste as that term is defined in 30 T.A.C. § 335.1(117) (40 C.F.R. § 260.10) in the tanks identified in Paragraph 20.

34. To date, neither the Respondent USET or Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste in the tanks identified in Paragraph 20.

35. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by processing (treating) hazardous waste without a permit.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

36. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

37. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

38. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

39. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

40. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

41. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

42. On various dates between June 15, 2008 and the present, certain hazardous wastes were fed into the TDU that did not meet the definition of "recyclable materials" as that term is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

43. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 42.

44. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

45. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the

> treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

46. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants and to remove them from the hazardous waste feed material, and transfers them to a gas treatment system using a nitrogen carrier gas. The oil is then recovered by condensing it in the gas treatment system. A process vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, and burned.

47. The separation of the organic contaminants from the hazardous waste in the indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

48. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

49. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a permit.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

50. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

51. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

52. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

53. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means.

> Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

54. The burning of the gas in the TDU's combustion chamber constitutes thermal processing (thermal treatment), as term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

55. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as "any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

56. The TDU is an enclosed device that uses controlled flame combustion.

57. The TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

58. The TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] because it thermally processes (thermally treats) hazardous waste by burning the hazardous waste using controlled flame combustion.

59. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

60. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and

30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste in an unpermitted incinerator.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

61. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

62. Between on or about March 9, 2010 and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

63. The roll-off boxes identified in Paragraph 62 contained material which was destined for the TDU.

64. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

65. The roll-off boxes identified in Paragraph 62 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

66. To date, the Respondent USET has not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y".

67. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

III. COMPLIANCE ORDER

68. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

1. As of the effective date of this CAFO, feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and	488999	All Other Support Activities for Transportation

	stockyards for transportation)		
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility.

3. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).

4. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 63.1209. The Respondents shall use a carbon monoxide and a hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use an oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen.

5. Within ninety (90) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ applicable operating parameters for the TDU. The operating

parameters shall include, but are not limited to, maximum feed rate, maximum condenser outlet temperature, ~~and~~ minimum firebox temperature, and limits on ash, semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic).

6. The Respondents shall operate the TDU in a manner that the one-hour and 12-hour rolling averages for the operating parameters are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(b).

7. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA. The Report shall include the following:

a. Identify the customer, the customer's SIC and NAICS code, copies of the relevant waste approval documents, and manifests for the previous six month period.

b. All deviations from the CEMS monitoring required by Paragraph 68.A.4.

c. All time periods in where there were deviations of the one-hour and 12-hour rolling averages of the operating parameters required under Paragraph 68.A.6.

d. The initial Report shall include documentation showing the installation dates of the equipment required by Paragraphs 68.A.3 and 4.

The Report may be submitted in an electronic format (i.e., compact disk). The Respondent may claim the report as confidential business information, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within ninety (90) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA, an application for a Class 3 RCRA Permit Modification to permit the TDU as an incinerator under Subpart O in accordance with 30 T.A.C. § 335.152(a)(13)

(40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. This permit application will serve as the Documentation of Compliance required by 40 C.F.R. § 63.1211(c).

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU and oil reclamation facility, including the waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351).

3. The Respondents shall also request that the final RCRA permit also include the following:

a. The requirements of 40 C.F.R. Part 63, Subparts A and EEE;

b. The feedstock limitations set forth in Paragraph 68.G;

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers; and

d. Any risk-based terms and conditions necessary to protect human health and the environment in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ and EPA within the deadline set forth in Paragraph 68.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date.

5. By no later than two and one-half years from the effective date of this CAFO, the Respondents must complete all permitting requirements and have a final RCRA Subpart O permit for the TDU. In the event that TCEQ and EPA do not issue a final RCRA Subpart O permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

6. Upon the issuance of a Clean Air Act Title V permit to the Respondents and incorporation of the requirements of Subpart EEE for the TDU and the oil reclamation facility into the Title V permit, the requirements of Subpart EEE may be removed from the RCRA Permit upon request of the permittee(s).

C. Notice of Intent to Comply (NIC)/Public Participation

1. Within ninety (90) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b), and an initial notification pursuant to 40 C.F.R. § 63.9(b).

2. The Respondents shall make the draft NIC available to the public upon issuance of the notice of public meeting pursuant to 40 C.F.R. § 63.1210(c)(3).

3. The Respondents shall provide notice to the public of a permit modification request pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)].

4. The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) days comment period. The information public meeting will also include information related to the risk burn set forth in Paragraph 68.F below.

5. The Respondents shall submit to TCEQ and EPA the final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.

6. The failure to timely submit the final NIC to TCEQ and EPA no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.

D. Startup, Shutdown, and Malfunction Plan

1. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and 63.1206(c)(2). The Respondents shall comply with any instructions or directives from TCEQ regarding approval, disapproval, or submission of any additional information. A copy of the Startup, Shutdown, and Malfunction Plan shall also be submitted to EPA.

E. Comprehensive Performance Test (CPT)

1. The Respondents shall perform a comprehensive performance test (CPT) as set forth below. The CPT is required to demonstrate compliance with the emissions standards of 40 C.F.R. Part 63, Subpart EEE, establish limits for the operating parameters provided by 40 C.F.R. § 61.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA for approval a complete and approvable comprehensive performance test (CPT) plan and a continuous monitoring system (CMS) performance test plan pursuant to the requirements of 40 C.F.R. §§ 63.7, ~~and~~ 63.1207, and 63.1209. The CPT plan shall ~~will~~ also provide for a performance test to determine the efficiency

and operating parameters of the condensers from the Off-Gas Condensing Recovery System, the capture efficiency, destruction and removal efficiency, and the actual nature, pattern, and quantity of emissions from EPN EP-2, and any other fugitive or point source emissions of the TDU system capable of routing off-gas from the TDU to the atmosphere, including its air contaminant control systems, product recovery systems, and treated material handling system.

3. The CPT should be integrated with the Risk Burn described below to produce a consistent set of proposed enforceable permit conditions.

4. The Respondents shall make the CPT plan and CMS performance test plan available for public review upon issuance of the notice of NIC public meeting.

5. The Respondents shall implement the CPT Plan and the CMS performance test plan as approved by TCEQ and EPA, within ninety (90) days after approval of the CPT Plan and the CMS performance test plan. During the testing, the Respondents shall comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).

6. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations), that they have exceeded any emission standard during a CPT for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except as provided in 40 C.F.R. § 63.1207(l)(1). The Respondents must make this determination within forty-five (45) days following completion of the CPT. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

7. All analyses required by the CPT plan shall be performed by a laboratory pre-approved by TCEQ.

8. Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), within ninety (90) days from completion of the CPT and the CMS performance test, the Respondents shall submit a Notification of Compliance (NOC) to TCEQ and EPA documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under
40 C.F.R. § 63.1209. All data collected during the CPT and the CMS performance test (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to TCEQ and EPA along with the NOC.

9. As of the date of the submission of the NOC, the Respondent shall comply with all operating requirements of the NOC, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219.

10. The failure to timely submit an NOC to TCEQ and EPA within ninety (90) days from completion of the CPT and the CMS performance test shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

F. Risk Burn

1. To collect emissions data for evaluation in a site-specific risk assessment, as part of its RCRA permit application for the TDU, within one hundred twenty (120) days of the effective date of this CAFO, the Respondents must prepare and submit to TCEQ and EPA for approval, a risk burn plan in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001, and the Human Health Risk Assessment

Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005.

2. The risk burn should be integrated with the Comprehensive Performance Test to produce a consistent set of proposed enforceable permit conditions.

3. The Respondents shall implement the risk burn plan as approved by TCEQ and EPA within ninety (90) days after approval of the risk burn plan.

4. All analyses required by the risk burn plan shall be performed by a laboratory pre-approved by TCEQ.

5. The risk burn performed by the Respondents shall collect fugitive and stack emissions data and define the operating requirements for the TDU based on control parameters identified in Chapters 4 through 7 of the Risk Burn Guidance for Hazardous Waste Combustion Facilities. During the risk burn, the Respondent shall evaluate each of the constituents in Chapters 4 through 7 of Risk Burn Guidance including the dioxins, furans, other organics, metals, particulate matter, hydrogen chloride, and chlorine identified therein.

6. During the risk burn (or as soon after the burn as is practicable), the Respondents shall make the determinations set forth for the Risk Burn Guidance for Hazardous Waste Combustion Facilities, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities deemed appropriate by the TCEQ. During the risk burn, the Respondent must demonstrate that the emissions from the TDU do not present a risk to human health or the environment.

7. Within one hundred twenty (120) days after completion of the risk burns, the Respondents must submit to TCEQ and EPA a certification that the risk burns have been carried

out in accordance with the approved risk burn plans, and must submit the results of all the determinations by the risk burn plan. The Respondents must also submit a complete and approvable Risk Assessment Report consistent with the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. All data collected during the risk burns must be submitted to TCEQ and EPA along with the certification.

8. A copy of the risk burn plan shall be made available to the public upon issuance of the notice of public meeting pursuant set forth in Paragraph 68.C.3 above.

9. The failure to timely submit a risk burn certification and the Risk Assessment Report to TCEQ and EPA within one hundred twenty (120) days from completion of the risk burn shall result in the termination of the Respondents' authorization to operate the TDU on that date. unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

G. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical	213112	Support Activities for Oil & Gas Operations

	mapping & surveying)		
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in its Final RCRA permit.

H. Submission, Revision, and Approval Process

1. For all applications or plans required be submitted to TCEQ and/or EPA approval under this CAFO, TCEQ/EPA will review these applications or plans and issue only one Notice

of Deficiency (NOD) to the Respondents. The Respondents must provide an approvable response to TCEQ and EPA within thirty (30) days of receipt of the NOD. In the event that the Respondents fail to submit a timely and good-faith approvable NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline (thirty (30) days from the date of receipt of the NOD).

I. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart O – Incinerator Unit in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), and incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE (unless those provisions have already been incorporated into a Clean Air Act Title V permit) and the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA-R-05-006, September 2005.

2. The Respondents may seek relief under the provisions of Section IV.E of the CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

J. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925,

40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subparts A and EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R. § 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.D of this CAFO.

K. Submissions

In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

69. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the

applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

70. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

71. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

72. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective

ED_002427B_00006774-00026

date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

73. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

74. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. STIPULATED PENALTIES

75. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 68.A. 9, 68.C.1, 68.D.1, 68.E.2, and 68.F.1

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Certain Interim Operating Requirements – Paragraphs 68A.3, 4, and 5

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

76. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 70 herein. Interest and late charges shall be paid as stated in Paragraphs 72 - 73 herein.

77. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

D. DISPUTE RESOLUTION

78. If the Respondents object to any decision or directive of EPA in regard to Section III, the Respondents shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

79. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

80. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated

by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

81. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

E. FORCE MAJEURE

82. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO.

83. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents' first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.F of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for

attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondent from asserting any claim of force majeure.

84. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.G of this CAFO.

85. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event caused any delay the Respondents' claim was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event.

F. NOTIFICATION

86. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P. :

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

Section Manager
Industrial and Hazardous Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

G. MODIFICATION

87. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

H. RETENTION OF ENFORCEMENT RIGHTS

88. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

89. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

90. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

91. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, other appropriate relief relating to this Facility, the Respondents 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 Complainant or 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 this CAFO.

92. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant, does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

I. INDEMNIFICATION OF EPA

93. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

J. COSTS

94. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondents specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

K. TERMINATION

95. At such time as the Respondents believe they has completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary

documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

L. EFFECTIVE DATE

96. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

ED_002427B_00006774-00035

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____

TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

ED_002427B_00006774-00038

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copies of the CAFO were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 Ross Avenue
Dallas, Texas 75202-2733

April XX, 2012

CONFIDENTIAL SETTLEMENT COMMUNICATION

Via e-mail – mreagan@mcginnislaw.com & jdhead@fbhh.com

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Dear Mary & J.D.:

As you know, back on March 15, 2012, EPA informed U.S. Ecology Texas, Inc. (USET) and TD*X Associates, L.P. (TD*X), that it planned to file an administrative complaint alleging, among other things, that USET and TD*X were operating an incinerator without a RCRA permit. Shortly thereafter, officials from USET and/or TD*X contacted EPA management, asking that parties engage in pre-filing negotiations in an attempt to settle this case without filing an administrative complaint. EPA agreed to this request. We subsequently met on April 11, 2012, where USET and TD*X presented two alternatives which they hoped would allow the operation of the TDU without a RCRA permit, or alternatively, with a Subpart X permit.

We have reviewed your proposed alternatives to either classify the TDU as a distillation unit, or to install a carbon absorber prior to the combustion chamber. Neither of these proposals would allow operation of the TDU without a RCRA Subpart O permit. We don't agree that the TDU is a distillation unit because **[need someone to fill this in]**. Also, the installation of a carbon absorber would just be another treatment step prior to the treatment of the hazardous waste in the combustion chamber. Therefore, the only option left without a reconfiguration is a RCRA Subpart O permit.

Given EPA's position that a Subpart O permit is required, and USET and TD*X's reluctance to obtain a Subpart O permit, the question that remains is whether USET and TD*X are willing to negotiate a consent agreement and final order (CAFO) with such an outcome. We have not received such assurances. I have attached a CAFO which sets forth the terms that EPA believes are necessary to settle this case in accordance with RCRA. Please review this CAFO and let us know by **[any suggestions?]** whether you are willing to negotiate in good faith a

CAFO which would require the parties to obtain a RCRA Subpart O permit for the thermal desorption unit (TDU). If we do not receive such assurances, then obviously there is no reason to waste everyone's time. If one party is willing and the other is not, the question that then needs to be asked whether that one party would be able to meet the requirements of the CAFO without the other party.

Obviously, there are a number of factors that you would have to consider. We would like you consider the following. First, the only substantive difference between a RCRA Subpart O and a Subpart X permit would be that a Subpart O permit requires that you obtain a Clean Air Act Title V permit. Given that a Title V permit imposes no new substantive requirements, there would be very little difference in how the parties operate the oil reclamation unit other than some reporting requirements. Second, assuming that EPA is successful in convincing an ALJ that a Subpart O permit is required, would the relief that is rewarded be flexible enough to address changing circumstances? I seriously doubt that the relief awarded would include provisions such as dispute resolution and force majeure. You would be better able to negotiate the timing of the submittals with EPA, as opposed to a judge potentially splitting the difference or siding with EPA's proposed deadline.

A. Compliance Order

The enclosed draft CAFO sets forth a compliance order that allows operation of the TDU under certain conditions pending the processing of the RCRA permit and related activities. There are four major parts of this Compliance Order:

1. Interim Operating Requirements – These requirement include restrictions on feedstock, interim operating limits, installation and operation of certain equipment required by 40 C.F.R. Part 63, Subpart EEE, and reporting requirements.

2. RCRA Permit Modification – This section requires the submission of a Class 3 RCRA Permit Modification to permit the TDU as a Subpart O Incinerator. The permit modification is also required to include the requirements of 40 C.F.R. Part 63, Subparts A and EEE.

3. Subpart EEE Requirements – The Subpart EEE requirements are broken down into three parts: Section C - Notice of Intent to Comply (NIC)/Public Participation, Section D – Startup, Shutdown, and Malfunction Plan, and Section E – Comprehensive Performance Test (CPT). The CPT will also include a performance test to determine the efficiency and operating parameters of the condensers. Please note that you will need to obtain a Clean Air Act Title V permit because of the applicability of Subpart EEE, even if you are not a major source. 40 C.F.R. § 63.1200(a).

4. Risk Burn – This provision requires the performance of a risk burn, which will be used for the site-specific risk assessment, which will be submitted to determine whether risk-based terms and conditions are need to be added to the permit to protect human health and the environment. We believe that a risk assessment is necessary because of the expected high public interest in this permit modification, along with **[need explanation]**.

As we told you at our last meeting, a copy of the Compliance Order portion of the CAFO was sent to TCEQ for their review. We will be working with them to refine this portion of the CAFO, if needed.

B. Time Frame

In order for a CAFO to be enforceable, it must have a date certain that the parties are in compliance. Therefore, we cannot have an open-ended CAFO. At some point, the parties must have received a RCRA permit or hazardous waste activities must be terminated. A timeline with the deadlines from the CAFO and estimated review time is attached as Enclosure A.

C. Violations

Because we have not spent a lot of time specifically discussing the violations, I have provided a brief explanation of each violation below:

Count One – Processing[1] Hazardous Waste without a Permit. I mentioned this count to Mary, but I don't believe I mentioned it to J.D. USET and TD*X processed (treated) hazardous waste that was not "oil-bearing hazardous waste from petroleum refining, production, or transportation practices" (petroleum industry waste) such as waste from chemical plants. As such, the recycling exemption in 40 C.F.R. § 261.6(a)(3)(iv)(C) would not apply. Therefore, placement of non-petroleum industry hazardous waste in the tanks in the oil reclamation unit would constitute storage of hazardous waste without a permit.

Count Two – Processing Hazardous Waste without a Permit. This Count applies to the shipments of non-petroleum industry waste that were fed into the TDU (see Count 1 above). The separation of organic contaminants from the hazardous waste in the TDU constitutes processing. Since the recycling exemption in 40 C.F.R. § 261.6(a)(3)(iv)(C) does not extend to non-petroleum industry waste, USET and TD*X processed hazardous waste in the TDU without a permit. Since treatment took place in the TDU, this violation is unrelated to the burning of the non-condensed gases in the combustion chamber of the TDU. No penalty is assessed for this violation, since it would be covered by Count 3.

Count Three – Processing Hazardous Waste without a Permit. This violation involves the burning of the noncondensable gases in the combustion chamber of the TDU from all of the hazardous waste fed into the TDU, irrespective of whether the feedstock was petroleum industry waste.

Count Four – Storage of Hazardous Waste without a Permit. This violation covers the roll-off boxes of hazardous waste stored in the area of the facility called the "Y" from March 9, 2010 through June 11, 2010. In USET's June 29, 2011 letter, USET claimed the following:

---

[1] Texas uses the term "processing" in place of treatment.

> The use of the "Y" was to stage "in-process" waste that had entered, but not completed, the oil reclamation process. For example, initial separation of liquids from oil sludge may have been completed on a waste stream upon arrival at the facility. Subsequently, the sludge may have been placed at the "Y" awaiting further processing in the TDU. Since the waste had entered a reclamation process that is not regulated under parts 262 through 266, the requirements under 40 C.F.R. § 262.34, referenced by EPA as their concern, would not apply to these containers.

June 29, 2011 letter at 4 – 5.

However, storage of hazardous waste prior to recycling is regulated. 40 C.F.R. § 261.6(c)(1). One cannot claim that a waste is "in process" when it started recycling process (e.g., initial separation of liquids from oily sludge), then place the sludge in a roll-off box elsewhere for over a month, and then return it to the TDU to be processed. Once the waste left the oil reclamation process, it was required to be stored in a permitted storage area.

D. Penalty Calculations

We have calculated a proposed penalty of $1,385,457. Counts 1 – 3 – ($1,212,027) apply to both USET and TD*X, to be split between the two parties as they see fit. Count 4 ($173,430) only applies to USET.

Count 1 – $ 343,710
Count 2 – Included in Count 3
Count 3 – $ 868,317
Count 4 – $ 173,430

Total $1,385,457

I have enclosed a copy of the penalty calculation worksheets, the 2003 RCRA Civil Penalty Policy, and the Adjusted Penalty Matrices.

We did not make any upfront adjustments to the penalty. We could have increased the penalty calculations for willfulness/negligence because of the non-petroleum industry wastes that were used as feedstock. It is clear that such wastes as chemical plant wastes would not be considered as petroleum industry wastes [*see* 40 C.F.R. § 261.4(a)(12)(ii)]. Likewise, we could have increased the penalties for history of noncompliance, given the 2009 and 2010 Agreed Orders with TCEQ, but chose not to. If this case goes to hearing, EPA reserves the right to include these adjustments, but also any others it feels is appropriate. EPA also reserves the right to include additional violations that are not cited here.

As to the economic benefit component in Count Three, we used the BEN model, which is a free download available on EPA's website at http://www.epa.gov/compliance/civil/econmodels/. The economic benefit was calculated to be $73,757. This is a delayed cost, since the parties will conduct the appropriate testing and pay the applicable permit fees. If for

some reason testing and a permit is not needed, the economic benefit would be an avoided cost, or $296,303. The inputs for the economic benefit were $4,000 for permitting fees paid to TCEQ, $10,923 for permitting an additional unit (25% of the general facility requirements permitting costs), and $326,584 for testing, for a total of $341,507. These figures came from tables in the 1997 Document entitled "Estimating Costs for Economic Benefit of RCRA Noncompliance" (copy enclosed). We used the typical cost estimate for these activities, as opposed to a lower figure or higher figure. This number ($341,507) was inputted as a one-time, nondepreciable expenditure. The cost estimate date was April 16, 2012, June 15, 2008 was used as the noncompliance date, and the penalty due date was June 1, 2012. The BEN calculations for both the delayed cost and avoided cost estimates are included as part of the penalty calculation worksheets. Finally, I have enclosed an electronic copy of 40 C.F.R. Part 22, which governs the terms and conditions of the CAFO.

If you have any questions, please feel free to call me at (214) 665-8074.

Sincerely,

Evan L. Pearson
Senior Enforcement Counsel

Enclosures

- CAFO Time Line
- Draft CAFO
- Draft Penalty Calculations
- RCRA Civil Penalty Policy
- Adjusted Penalty Matrices
- TCEQ Permitting Fees
- Estimating Costs for Economic Benefit of RCRA Noncompliance
- 40 C.F.R. Part 22

ENCLOSURE A

CAFO TIME LINE WITH DEADLINES AND ESTIMATED APPROVAL TIME[1]

Items 1 - 4 and 8 are calculated from the effective date of the CAFO

1. Immediately

a. Waste feedstock limitations - ¶ 68.A.1

2. Within 90 days (3 months)

a. Install/monitor/operate automatic hazardous waste feed cutoff - ¶ 68.A.3
b. Install /monitor/operate continuous emissions monitors - ¶ 68.A.4
c. Submit operating parameters for TDU - ¶ 68.A.5
d. Submit Class 3 RCRA permit modification - ¶ 68.B.1
e. Submit draft Notice of Intent to Comply and Initial Notification - ¶ 68.C.1

3. Within 120 days (4 months)

a. Submit Startup, Shutdown, and Malfunction Plan - ¶ 68.D.1
b. Submit Comprehensive Performance Test Plan - ¶ 68.E.2
c. Submit Continuous Monitoring System Performance Test Plan - ¶ 68.E.2
c. Submit Risk Burn Plan - ¶ 68.F.1

4. Within 390 days (13 months)

Expected Approval of CPT and Risk Burn Plans

5. Within 90 days after approval of CPT and Risk Burn Plans

Complete CPT and risk burn - ¶¶ 68.E.5 and 68.F.3

6. Within 90 days after completion of CPT test

Submit NOC - ¶ 68.E.8

7. Within 120 days after Risk Burn

Submit Risk Burn Certification and Risk Assessment Report - ¶ 68.F.7

8. No later than 2 ½ years (30 months)

RCRA Permit Decision - ¶ 68.B.5

---

[1] The public meeting and submission of Final NIC requirements (¶ 68.C.4 and 5) are not included in this time frame since they are not tied to a specific deadline.

LAW OFFICES
McGINNIS, LOCHRIDGE & KILGORE, L.L.P.
600 CONGRESS AVENUE
SUITE 2100
AUSTIN, TEXAS 78701

HOUSTON, TEXAS OFFICE
1111 LOUISIANA STREET, SUITE 4500
HOUSTON, TEXAS 77002
(713) 615 - 8500
FAX (713) 615-8585

AUSTIN, TEXAS OFFICE
(512) 495 - 6000
FAX (512) 495 - 6093

WRITER'S DIRECT DIAL NUMBER:
495-6013
mreagan@mcginnislaw.com
Fax: (512) 505-6313

April 17, 2012

VIA E-MAIL

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U. S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: U.S. Ecology, Inc.
TD*X Associates

Dear Evan:

During the April 11, 2012 meeting EPA expressed it did not understand its conclusion related to the Rineco case and was unable to provide an explanation of how EPA concluded that Subpart X permitting was appropriate for Rineco's TMW unit. Additionally, EPA reiterated its need to be consistent in its determinations and that the conclusions EPA has established in U.S. Ecology's case are consistent with prior decisions. These comments appear contrary to each other and concern our team greatly on the reliance of the Rineco decision in our case and need for consistent application of EPA's interpretations.

We have provided below our analysis of the correspondence provided by EPA to the State of Arkansas stating its justification and conclusions that a Subpart X permit rather than a Subpart O permit was required. This clarification and understanding is imperative to ensure the application of these standards is consistent.

The July 12, 2010 letter from EPA to Thomas Rheaume at the Arkansas Department of Environmental Quality provides a process description that omits the condensing system between the thermal desorber and the Thermal oxidizer. As a result EPA concluded,

> the TOU is considered an *afterburner chamber* for the combustion process initiated in the TMWU. Subsequently, the two process units **together** (i.e., the TMWU followed by the TOU) are classified as an incinerator (emphasis added).

The letter offers two EPA interpretive memos to support its position, neither of which contemplates the applicability of these standards to RCRA exempt recycling units.

The January 4, 2011 letter from EPA to Mike Bates at Arkansas Department of Environmental Quality clarifies and provides a correction to that interpretation. The letter states that EPA did not consider the condensing system in the July 12, 2010 determination and stated that the condensing system changes the conclusions of the applicability of the incinerator standards. This one process difference resulted in EPA changing its conclusion that the units are "better classified as miscellaneous units under RCRA" and that "the two units are **not** 'hazardous waste combustors' as defined in 40 CFR §63.1201 (emphasis added)."

The interpretive memos provided by EPA support that the incineration standards are applicable if the thermal desorption unit is followed by an afterburner. EPA's conclusion clearly draws a distinction that the recovery of vapors in Rineco's primary and secondary condensers establishes that the thermal oxidizer is not acting as an afterburner, as originally referenced in EPA's July 12, 2010 letter. Therefore, the conclusion of Subpart X – Miscellaneous Unit applicability is based solely on the treatment activity that is occurring in the Thermal Metals Wash (TMW) Unit.

Like Rineco, the thermal desorption process at U.S. Ecology involves the condensation of gases immediately following the TDU. At U.S. Ecology, the **entire gas stream** is passed through condensers and the non-condensable fraction routed back into the TDU. A slip stream of non-condensable gases is routed through a process vent to the combustion chamber to maintain a pressure balance within the system. Thus, at a minimum, the combustion chamber does not qualify as an incinerator based on the analysis in EPA's January 4, 2011 applicability determination letter.

More importantly, however the TDU processes material specifically defined under RCRA's reclaimed oil exemption. Rineco's TMW, which was determined to be for material destruction, is distinguished from TD*X's TDU, which is for exempt material reclamation. Thus, establishing a consistent evaluation would recognize this distinction and conclude that TD*X's system is neither a hazardous waste combustor nor a Subpart X unit; rather, it is exempt from these requirements in §261.6(b), which provides that recyclable materials including reclaimed oil are not subject to regulation under Part 264, including Subparts O and X, relating to incinerators and miscellaneous units, respectively. Section 261.6(c)(1) further provides that the recycling process is exempt from regulation.

While generally exempting these recycling operations from regulation, §261.6 requires compliance with 40 CFR Parts 264 and 265, Subparts AA and BB, as applicable, for recycling units located at permitted hazardous waste management facilities. As we discussed at our April 11, 2012 meeting, regulation of the oil reclamation process as a distillation operation under Subpart AA is an appropriate mechanism under RCRA to address EPA's concerns about any air emissions associated with the combustion chamber's process vent. Using this approach not only addresses EPA's specific process vent concern but also ensures programmatic consistency highlighted by EPA at our meeting as a key objective.

Sincerely,

Mary Reagan

MBR/rrh

cc: Mark Hansen, EPA
Earl Lott, TCEQ
Simon Bell, USET
Andrew Marshall, USET
J.D. Head
(via e-mail)

LAW OFFICES
McGINNIS, LOCHRIDGE & KILGORE, L.L.P.
600 CONGRESS AVENUE
SUITE 2100
AUSTIN, TEXAS 78701

HOUSTON, TEXAS OFFICE
1111 LOUISIANA STREET, SUITE 4500
HOUSTON, TEXAS 77002
(713) 615 - 8500
FAX (713) 615-8585

AUSTIN, TEXAS OFFICE
(512) 495 - 6000
FAX (512) 495 - 6093

WRITER'S DIRECT DIAL NUMBER:
495-6013
mreagan@mcginnislaw.com
Fax: (512) 505-6313

April 17, 2012

VIA E-MAIL

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U. S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: U.S. Ecology, Inc.
TD*X Associates

Dear Evan:

During the April 11, 2012 meeting EPA expressed it did not understand its conclusion related to the Rineco case and was unable to provide an explanation of how EPA concluded that Subpart X permitting was appropriate for Rineco's TMW unit. Additionally, EPA reiterated its need to be consistent in its determinations and that the conclusions EPA has established in U.S. Ecology's case are consistent with prior decisions. These comments appear contrary to each other and concern our team greatly on the reliance of the Rineco decision in our case and need for consistent application of EPA's interpretations.

We have provided below our analysis of the correspondence provided by EPA to the State of Arkansas stating its justification and conclusions that a Subpart X permit rather than a Subpart O permit was required. This clarification and understanding is imperative to ensure the application of these standards is consistent.

The July 12, 2010 letter from EPA to Thomas Rheaume at the Arkansas Department of Environmental Quality provides a process description that omits the condensing system between the thermal desorber and the Thermal oxidizer. As a result EPA concluded,

> the TOU is considered an *afterburner chamber* for the combustion process initiated in the TMWU. Subsequently, the two process units **together** (i.e., the TMWU followed by the TOU) are classified as an incinerator (emphasis added).

The letter offers two EPA interpretive memos to support its position, neither of which contemplates the applicability of these standards to RCRA exempt recycling units.

The January 4, 2011 letter from EPA to Mike Bates at Arkansas Department of Environmental Quality clarifies and provides a correction to that interpretation. The letter states that EPA did not consider the condensing system in the July 12, 2010 determination and stated that the condensing system changes the conclusions of the applicability of the incinerator standards. This one process difference resulted in EPA changing its conclusion that the units are "better classified as miscellaneous units under RCRA" and that "the two units are **not** 'hazardous waste combustors' as defined in 40 CFR §63.1201 (emphasis added)."

The interpretive memos provided by EPA support that the incineration standards are applicable if the thermal desorption unit is followed by an afterburner. EPA's conclusion clearly draws a distinction that the recovery of vapors in Rineco's primary and secondary condensers establishes that the thermal oxidizer is not acting as an afterburner, as originally referenced in EPA's July 12, 2010 letter. Therefore, the conclusion of Subpart X – Miscellaneous Unit applicability is based solely on the treatment activity that is occurring in the Thermal Metals Wash (TMW) Unit.

Like Rineco, the thermal desorption process at U.S. Ecology involves the condensation of gases immediately following the TDU. At U.S. Ecology, the **entire gas stream** is passed through condensers and the non-condensable fraction routed back into the TDU. A slip stream of non-condensable gases is routed through a process vent to the combustion chamber to maintain a pressure balance within the system. Thus, at a minimum, the combustion chamber does not qualify as an incinerator based on the analysis in EPA's January 4, 2011 applicability determination letter.

More importantly, however the TDU processes material specifically defined under RCRA's reclaimed oil exemption. Rineco's TMW, which was determined to be for material destruction, is distinguished from TD*X's TDU, which is for exempt material reclamation. Thus, establishing a consistent evaluation would recognize this distinction and conclude that TD*X's system is neither a hazardous waste combustor nor a Subpart X unit; rather, it is exempt from these requirements in §261.6(b), which provides that recyclable materials including reclaimed oil are not subject to regulation under Part 264, including Subparts O and X, relating to incinerators and miscellaneous units, respectively. Section 261.6(c)(1) further provides that the recycling process is exempt from regulation.

While generally exempting these recycling operations from regulation, §261.6 requires compliance with 40 CFR Parts 264 and 265, Subparts AA and BB, as applicable, for recycling units located at permitted hazardous waste management facilities. As we discussed at our April 11, 2012 meeting, regulation of the oil reclamation process as a distillation operation under Subpart AA is an appropriate mechanism under RCRA to address EPA's concerns about any air emissions associated with the combustion chamber's process vent. Using this approach not only addresses EPA's specific process vent concern but also ensures programmatic consistency highlighted by EPA at our meeting as a key objective.

Sincerely,

Mary Reagan

MBR/rrh

cc: Mark Hansen, EPA
Earl Lott, TCEQ
Simon Bell, USET
Andrew Marshall, USET
J.D. Head
(via e-mail)

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 4/2/2012 5:50:34 PM
To: Tidmore, Guy [tidmore.guy@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Ryan Rosser [Rosser.Ryan@epa.gov]; Lutz, Craig [lutz.craig@epa.gov]; Toups, Brad [Toups.Brad@epa.gov]; Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]; Shah, Harry [shah.harry@epa.gov]; Michael Barra [Barra.MichaelLNDU@usepa.onmicrosoft.com]
Subject: Draft US Ecology/TD*X Associates Compliance Order`
Attachments: RCRA Permit Settlement Requirements.docx

Attached is draft injunctive relief for U.S. Ecology and TD*X Associates. The draft includes proposed interim operating conditions, and requires them to obtain a RCRA incinerator (Subpart O) permit (I'm still looking into the Subpart O vs. Subpart X issue). It incorporates RCRA Subpart O, MACT EEE, and requires a site specific risk assessment (I also added a provision for the companies to determine the efficiency of the condensers). Since we are on a fast track, could you please give me your comments ASAP? There are also a number of comment balloons in the document which request certain information or seek answers to certain questions. Could the appropriate person(s) please answer those questions? I value any and all comments. If you think something is missing, or requires more detail, please feel free to provide the appropriate language. Thanks.

RCRA Permit Settlement Requi...

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

IMPORTANT/CONFIDENTIAL: The content of this e-mail is intended only for the use of the individual or entity to whom it is addressed. This message contains information from the U.S. Environmental Protection Agency which may be privileged, confidential, or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this message, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail, and delete this e-mail from your system.

1. Interim Operating Requirements

Commented [ELP1]: Do we need any additional operating requirements, such as feed rate, ppm concentration, inspections, etc.

Do we need any recordkeeping requirements?

A. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the TDU in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. § 264.351). All materials from the closure of the TDU are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to EPA within fifteen (15) days after closure is completed, as provided in Paragraph _____ below.

B. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the rolling bins for the oil reclamation unit in accordance with 30 T.A.C. § 335.152(a)(7) (40 C.F.R. § 264.178). All materials from closure of the rolling bins are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to EPA within fifteen (15) days after closure is completed, as provided in Paragraph _____ below.

Commented [ELP2]: Are any other containers involved?

C. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the Shaker Deck Mix Tank, the 3 Mix Tanks, and the Centrifuge in the oil reclamation unit in accordance with 30 T.A.C. § 335.152(a)(8) (40 C.F.R. § 264.197). All materials from closure of the tanks are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to EPA within fifteen (15) days after closure is completed, as provided in Paragraph _____ below.

Commented [ELP3]: Is the centrifuge a tank? Is this the correct list? Are there more?

Commented [ELP4]: Need to evaluate tanks to see if need permit - i.e., are the tanks integral to the recycling process?

D. Upon completion of the closure activities set forth in Section 1.A, B, and C above, the Respondents shall notify EPA at least ten (10) days prior to the proposed re-start of the TDU. Unless otherwise notified by EPA, the Respondent may restart the TDU on the proposed re-start date.

D. Feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility.

Commented [ELP5]: Facility could have multiple SIC Codes, or a refinery could have some hazardous waste unrelated to the refining process.

2. RCRA Permit Modification

A. Within ____ days of the effective date of this CAFO, the Respondents shall submit to TCEQ, an application for a Class 3 RCRA Permit Modification, to permit the TDU as a Subpart O Incinerator Unit in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. A copy of the application shall also be submitted to EPA.

Commented [ELP6]: Any suggestions as to the time needed to prepare an application?

Commented [ELP7]: Does TD*X need to be on the permit application/permit, since they are the owner/operator of the TDU (which is located at the USET facility).

Will they have to get a new separate permit because USET has the HW permit, and TD*X owns and operates the TDU on USET's property?

Commented [ELP8]: Harry & Kishor - I assume that permitting this new unit this would be a Class 3 modification? Is this correct?

Commented [ELP9]: How do we handle the coordination between TCEQ and EPA. Who will be involved with this.

B. The permit application shall also include relevant requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU and oil-reclamation facility, including the waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C.. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351).

C. The Respondents shall also request that the final RCRA permit also include the following:

1. The requirements of 40 C.F.R. Part 63, Subpart EEE (Subpart EEE);
2. The feedstock limitations set forth in Paragraph 7;

3. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers; and

Commented [ELP10]: Craig/Brad - Is this language sufficient?

4. Any risk-based risk-based terms and conditions necessary to protect human health and the environment in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities.

D. Upon the issuance of a Clean Air Act Title V permit to the Respondents and incorporation of the requirements of Subpart EEE for the TDU and the oil reclamation facility into the Title V permit, the requirements of Subpart EEE may be removed from the RCRA Permit.

3. Notice of Intent to Comply (NIC)/Public Participation

A. Within ___ days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b).

Commented [ELP11]: Any suggestion as to how long they need to do this?

B. The Respondents shall make the draft NIC available to the public upon issuance of the notice of public meeting pursuant to 40 C.F.R. § 63.1210(c)(3).

C. The Respondents shall provide notice to the public of a permit modification request pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)].

D. The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) days comment period. The information public meeting will also include information related to the risk burn set forth in Section 5 below.

E. The Respondents shall submit final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.

4. Comprehensive Performance Test (CPT)

A. Within ___ days of the effective date of this CAFO, the Respondents shall submit to TCEQ for approval a draft comprehensive performance test (CPT) plan pursuant to the requirements of 40 C.F.R. §§ 63.7 and 63.1207. The CPT plan will also provide for a performance test to determine the efficiency and operating parameters of the condensers from the Off-Gas Condensing Recovery System. A copy of the CPT Plan shall be submitted to EPA.

Commented [ELP12]: Any suggested time as to how long they need to complete the CPT plan?

Commented [ELP13]: How does 63.1208 (test methods) and 63.1209 (monitoring requirements) fit in to the CPT?

Commented [ELP14]: Craig and Brad - Is this language sufficient?

B. The CPT should be integrated with the Risk Burn to produce a consistent set of proposed enforceable permit conditions.

C. The Respondents shall make the CPT plan available for public review upon issuance of the notice of NIC public meeting.

D. The Respondents shall install an automatic hazardous waste feed cutoff prior to the CPT.

Commented [ELP15]: 40 CFR 1206(c)(3). Is this required prior to the CPT test, or as of the date of the Notification of Compliance.

E. The Respondents shall install and calibrate continuous emissions monitors (CEMS) prior to the CPT. The Respondents shall use either a carbon monoxide or hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use an oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen.

Commented [ELP16]: Is this sentence correct? It has to be done prior to the CPT?

Commented [ELP17]: 40 CFR 63.1209(c)

F. The Respondents shall implement the CPT Plan as approved by TCEQ, according to the schedule set forth therein. During the testing, the Respondents shall comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).

Commented [ELP18]: Does EPA want input regarding approval of the plan?

Commented [ELP19]: Do we want actual notice in case we want to observe?

G. Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), within ninety (90) days from completion of the CPT, the Respondents shall submit a Notification of Compliance (NOC) to TCEQ and EPA documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under 40 C.F.R. § 63.1209. All data collected during the CPT must be submitted to TCEQ and EPA along with the NOC.

H. As of the date of the submission of the NOC, the Respondent shall comply with the requirements of 40 C.F.R. § 63.1219(b).

5. Risk Burn

A. To collect emissions data for evaluation in a site-specific risk assessment, as part of its RCRA permit application for the TDU, within ___ days of the effective date of this CAFO, the Respondents must prepare and submit to TCEQ for approval, a risk burn plan in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. The risk burn plan shall include a schedule for conducting the risk burn. A copy of the risk burn plan shall be submitted to EPA.

Commented [ELP20]: Do we need a site-specific risk assessment?

Commented [ELP21]: Any idea of how long they need to prepare a risk plan?

B. The risk burn should be integrated with the Comprehensive Performance Test to produce a consistent set of proposed enforceable permit conditions.

C. The Respondents shall implement the risk burn plan as approved by TCEQ, according to the schedule set forth therein.

Commented [ELP22]: Does EPA want input regarding approval of the plan?

D. The risk burn performed by the Respondents shall collect fugitive and stack emissions data and define the operating requirements for the TDU based on control parameters identified in

Chapters 4 through 7 of the Risk Burn Guidance for Hazardous Waste Combustion Facilities. During the risk burn, the Respondent shall evaluate each of the constituents in Chapters 4 through 7 of Risk Burn Guidance including the dioxins, furans, other organics, metals, particulate matter, hydrogen chloride, and chlorine identified therein.

E. During the risk burn (or as soon after the burn as is practicable), the Respondents shall make the determinations set forth for the Risk Burn Guidance for Hazardous Waste Combustion Facilities, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities deemed appropriate by the TCEQ. During the risk burn, the Respondent must demonstrate that the emissions from the TDU do not present a risk to human health or the environment.

F. Within ninety (90) days after completion of the risk burns, the Respondents must submit to TCEQ and EPA a certification that the risk burns have been carried out in accordance with the approved risk burn plans, and must submit the results of all the determinations by the risk burn plan. All data collected during the risk burns must be submitted to TCEQ and EPA along with the certification.

Commented [ELP23]: 40 CFR 270.62(b)(7) wouldn't apply to risk burn.

G. A copy of the risk burn plan shall be made available to the public upon issuance of the notice of public meeting pursuant set forth in Section 3.B. above.

H. Information relating to the risk burn shall be included in the public repository required by Section 3.D above.

6. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

A. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard

Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to

make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in its Final RCRA permit.

7. Additional Conditions

A. Whenever TCEQ issues a final RCRA permit for the TDU, the Respondents must comply with that permit. The Respondents must not operate the TDU at any time later than one year after the Respondent submits its initial application, except as that time is enlarged under Section ___ (Force Majeure) of this CAFO.

Commented [ELP24]: This deadline was in the Rineco CD. Is a one year time frame realistic in order to get an incinerator permit?

B. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart O – Incinerator Unit in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), and the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA-R-05-006, September 2005.

C. The Respondents may seek relief under the provisions of Section ____ of the CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

8. EPA Review and Comment

A. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925,

40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subpart EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R. § 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section ____ of this CAFO.

9. Submissions

A. In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

ED_002427B_00006789-00010

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admit the jurisdictional allegations contained herein; however, the Respondents neither admit nor deny the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waive any right to contest the allegations and their right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consent to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903(15).

ED_002427B_00006801-00002

11. The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. "Owner" is defined in 30 T.A.C. § 335.1(107) [40 C.F.R. § 260.10] as "the person who owns a facility or part of a facility."

13. "Operator" is defined in 30 T.A.C. § 335.1(108) [40 C.F.R. § 260.10] as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

15. "Facility" is defined in 30 T.A.C. § 335.1(59) [40 C.F.R. § 260.10] as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA I.D. No. TSD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) [40 C.F.R. § 260.10].

18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

19. An oil reclamation unit is located at the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30) three mix tanks (T-31, T-32, and T-33), a centrifuge, and a surge tank (T-34) at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit were inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Processing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment),[1] storage, or disposal of hazardous waste.

24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

28. Recyclable materials ~~Hazardous wastes~~ destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

30. On various dates after June 15, 2008, certain ~~hazardous wastes~~recyclable materials were processed in the tanks identified in Paragraph 20.

31. The recyclable materials~~hazardous waste~~ identified in Paragraph 30 did not meet the exemption in 30 T.A.C. § 335.24(c) [40 C.F.R. § 261.6(a)(3)(iv)(C) ~~definition of "recyclable materials" as that term is defined in 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]~~ because the hazardous wastes

were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

~~32. The exemption for recyclable materials in 30 T.A.C. § 335.24(c) [40 C.F.R. § 261.6(a)(3) is not applicable for the hazardous waste identified in Paragraphs 30 – 31.~~

3~~3~~2. The Respondent TD*X "processed" (treated) hazardous waste as that term is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] in the tanks identified in Paragraph 20.

3~~3~~4. To date, neither the Respondent USET or Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the processing (treatment) ~~storage~~ of hazardous waste in the tanks identified in Paragraph 20.

3~~4~~5. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by processing (treating) hazardous waste without a RCRA permit or interim status.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

3~~5~~6. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

3~~6~~7. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901

et seq."

37~~8~~. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

38~~9~~. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

39~~40~~. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

40~~1~~. Recyclable materials ~~Hazardous wastes~~ destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

41~~2~~. On various dates after June 15, 2008, certain recyclable materials ~~hazardous wastes~~ were fed into the TDU that did not meet the exemption in 30 T.A.C. § 335.24(c) [40 C.F.R. § 261.6(a)(3)(iv)(C) ~~definition of "recyclable materials, as that term is defined in 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]~~ because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

~~43. The exemption for recyclable materials in 30 T.A.C. § 335.24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous wastes identified in Paragraph 42.~~

~~44~~42. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10] as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

45~~3~~. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R.

§ 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

4~~6~~4. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents to a gas treatment system. The oil is recovered by condensing vapor phase organic constituents in the gas treatment system. The vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, where it is burned.

4~~5~~7. The separation of the organic contaminants from the hazardous waste in the TDU's indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

4~~6~~8. To date, neither the Respondent USET nor Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

4~~9~~7. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R.
§ 270.1(b)] by thermally processing (thermally treating) hazardous waste without a RCRA permit or interim status.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

~~50~~48. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~51~~49. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901
et seq."

5~~2~~0. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

5~~3~~1. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

5~~4~~2. On various dates after June 15, 2008, hazardous wastes were fed into the TDU.

5~~3~~5. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents to a gas treatment system. The oil is recovered by

condensing vapor phase organic constituents in the gas treatment system. The vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, where it is burned.

564. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10] as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

575. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

586. The burning of gases in the TDU's combustion chamber constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

597. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as

"any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

~~60~~58. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion.

~~61~~59. The combustion chamber of the TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

62~~0~~. The combustion chamber of the TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75)
[40 C.F.R. § 260.10] because it thermally processes (thermally treats) hazardous waste by burning hazardous waste using controlled flame combustion.

61~~3~~. To date, neither the Respondent USET nor Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

62~~4~~. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a RCRA permit or interim status.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

65~~3~~. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

6~~6~~4. Between on or about March 9, 2010, and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

6~~5~~7. The roll-off boxes identified in Paragraph 6~~4~~6 contained material which had entered the oil reclamation process and was being temporarily staged before undergoing subsequent stages of the reclamation process. The Respondent USET discontinued the use of the area called the "Y" for this purpose.

6~~6~~8. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

6~~7~~9. The roll-off boxes identified in Paragraph 6~~4~~6 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

~~70~~68. The Respondent USET had not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y".

~~71~~69. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a RCRA permit or interim status.

III. COMPLIANCE ORDER

7~~2~~0. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

1. As of the effective date of this CAFO, feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk

	Bulk Stations and Terminals (merchant wholesalers)		Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", and that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility.

3. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to EPA for approval, with a copy to TCEQ, interim limits on operating parameters, including, but not limited, to the following:

a. maximum hazardous waste feed rate to the rotary dryer;

b. limits on ash, semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic) (Cl_2 and HCl);

c. minimum rotary dryer temperature;

d. maximum gas/vapor flow rate to the Off-Gas Condensing Recovery System;

e. maximum Off-Gas Condensing Recovery System outlet temperature;

f. minimum combustion chamber temperature;

g. maximum gas/vapor flow rate to the combustion chamber;

h. other Off-Gas Condensing Recovery Systems operating parameter limits; and

i. any other operating parameter limits for air pollution control devices used.

The submittal shall include monitoring and recordkeeping requirements. The Respondents shall implement the operating parameter limits as approved or modified by TCEQ.

4. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).

5. Within ninety (90) days of the effective date of this CAFO, the Respondents shall reconfigure the TDU so that the non-condensable vent gases are routed to a thermal oxidizer unit (TOU) instead of the combustion chamber of the TDU. After the reconfiguration has occurred, for the purposes of Section III and IV.C of this CAFO only, references to the TDU shall include the TOU, unless otherwise indicated.

6. Within ninety (90) days of the effective date of this CAFO, the Respondent shall also submit to EPA for approval, with a copy to TCEQ, interim operating parameters for the TOU including, but not limited to:

a. minimum temperature of the TOU combustion chamber; and

b. maximum flue gas flow rate.

The Respondents shall implement the operating parameter limits as approved or modified by TCEQ.

7. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 63.1209. The Respondents shall use carbon monoxide and hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen. These CEMS shall be located in compliance with 40 C.F.R. Part 60, Appendix B requirements for rotary dryer emission point (EP-1), the combustion chamber emission point (EP-2), and the TOU. The

Respondents shall operate the TDU and the TOU in a manner that the one minute and hourly rolling averages are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(a).

8. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to TCEQ for approval, with a copy to EPA, a feedstream analysis plan prepared in accordance with 40 C.F.R. § 63.1209(c)(2). The Respondents shall implement the plan as approved or modified by TCEQ.

9. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA, with a copy to TCEQ. The Report shall include the following:

a. Identify the customer, the customer's SIC and NAICS code, copies of the relevant waste approval documents, and manifests for the previous six month period.

b. All time periods in where there were exceedances of the one minute and hourly rolling averages required under Paragraph 72.A.7.

c. The initial Report shall include documentation showing the installation dates of the equipment required by Paragraphs 72.A.4, A5, and A.7.

The Report may be submitted in an electronic format (i.e., compact disk). The Respondent may claim the report as confidential business information, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within ninety (90) days of the effective date of this CAFO, the Respondents shall submit to TCEQ, with a copy to EPA, an application for a Class 3 RCRA Permit Modification to permit the TDU as a miscellaneous unit under 40 C.F.R. Part 264, Subpart X in accordance with

30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33]. This permit application will serve as the Documentation of Compliance required by 40 C.F.R. § 63.1211(c).

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU, the TOU, and the oil reclamation unit, including an engineering report, waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) [40 C.F.R. §§ 264.341, 264.347, and 264.351].

3. The Respondents shall also request that the final RCRA permit also include the following:

a. The applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE;

b. The feedstock limitations set forth in Paragraph 68.F;

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers; and

d. Any risk-based terms and conditions necessary to protect human health and the environment.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ and EPA within the deadline set forth in Paragraph 72.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date.

5. By no later than two and one-half years (30 months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and have a final RCRA Subpart X permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with

30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33], and which incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE. In the event that TCEQ does not issue a final RCRA Subpart X permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

C. Notice of Intent to Comply (NIC)/Public Participation

1. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b), and an initial notification pursuant to 40 C.F.R. § 63.9(b).

2. The Respondents shall make the draft NIC available to the public either (a) at least thirty (30) days prior to the public meeting pursuant to 40 C.F.R. § 63.1210(b)(2), or (b) at a time approved by EPA and TCEQ.

3. The Respondents shall provide the following notices to the public:

a. Notice of Receipt of Application and Intent to Obtain Permit pursuant to 30 T.A.C. §§ 39.418 and 39.509. Notice of the public meeting required by 30 T.A.C. § 305.69(d)(4) shall be included with the Notice of Receipt of Application and Intent to Obtain Permit, as required by 30 T.A.C. § 39.418;

b. Notice to the public of the Notice of Application and Preliminary Decision pursuant to 30 T.A.C. §§ 39.419 and 39.509; and

c. NIC public meeting required by 40 C.F.R. § 63.1210(c)(3).

4. The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d)(4)

[40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) day comment period. This public meeting shall also be coordinated with the NIC public meeting required by 40 C.F.R. § 63.1210(c).

5. The Respondents shall submit to TCEQ and EPA the final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.

6. The failure to timely submit the final NIC to TCEQ and EPA no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.

D. Startup, Shutdown, and Malfunction Plan

1. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval, with a copy to EPA. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and 63.1206(c)(2). The Respondents shall comply with any instructions or directives from TCEQ regarding approval, disapproval, or submission of any additional information.

E. Trial Burn

1. The Respondents shall perform a trial burn as set forth below. The trial burn is required to demonstrate compliance with the emissions standards of 40 C.F.R. Part 63, Subpart EEE, establish limits for the operating parameters provided by 40 C.F.R. § 61.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to TCEQ for approval, with a copy to EPA, a complete and approvable trial burn plan and a continuous monitoring system (CMS) performance test plan pursuant to the requirements of 40 C.F.R. §§ 63.7, 63.1207, and 63.1209. The trial burn plan shall also provide for a performance test to determine the efficiency and operating parameters of the condensers from the Off-Gas Condensing Recovery System, the capture efficiency, destruction and removal efficiency, and the actual nature, pattern, and quantity of emissions from EPN EP-1, EP-2, the TOU, and any other fugitive or point source emissions of the TDU system capable of routing off-gas from the TDU to the atmosphere, including its air contaminant control systems, product recovery systems, and treated material handling system.

3. The Respondents shall make the trial burn plan and CMS performance test plan available for public review upon issuance of the notice of NIC public meeting.

4. The Respondents shall implement the trial burn plan and the CMS performance test plan as approved by TCEQ, within ninety (90) days after approval of the trial burn plan and the CMS performance test plan. During the testing, the Respondents shall comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).

5. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations) that they have exceeded any emission standard for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except as provided in 40 C.F.R. § 63.1207(*l*)(1). The Respondents must make this determination within forty-five (45) days following completion of the trial burn. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

6. All analyses required by the trial burn plan shall be performed by a NELAC accredited laboratory or by a laboratory pre-approved by TCEQ.

7. Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), within ninety (90) days from completion of the trial burn and the CMS performance test, the Respondents shall submit a Notification of Compliance (NOC) to TCEQ and EPA documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under 40 C.F.R. § 63.1209. All data collected during the trial burn and the CMS performance test (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to TCEQ and EPA along with the NOC.

8. As of the date of the submission of the NOC, the Respondent shall comply with all operating requirements of the NOC, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219.

9. The failure to timely submit an NOC to TCEQ and EPA within ninety (90) days from completion of the trial burn and the CMS performance test shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

F. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification

System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is

"oil-bearing", and that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in its Final RCRA permit.

G. Submission, Revision, and Approval Process

1. For all applications or plans required be submitted to TCEQ for approval under this CAFO, TCEQ will review these applications or plans and issue only one Notice of Deficiency (NOD) to the Respondents in accordance with 30 T.A.C. §§ 281.3(c) and 281.19(a). The Respondents must provide an approvable response to TCEQ, with a copy to EPA, within thirty (30) days of receipt of the NOD. In the event that the Respondents fail to submit a timely and good-faith approvable NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline [thirty (30) days from the date of receipt of the NOD].

H. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33], and which incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE.

2. The Respondents may seek relief under the provisions of Section IV.F of the CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

ED_002427B_00006801-00023

I. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925(c)(3), 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subparts A and EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R.

§ 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.E of this CAFO.

J. Submissions

In all instances in which this Compliance Order requires written submissions to EPA and TCEQ, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

731. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

742. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza

SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

ED_002427B_00006801-00026

75~~3~~. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

76~~4~~. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

77~~5~~. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

78~~6~~. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned

ED_002427B_00006801-00027

representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. ADDITIONAL REQUIREMENTS

7~~9~~7. The Respondents shall undertake the following additional requirements:

A. The Respondents agree that the oil reclamation unit and the TDU are subject to the requirements of 40 C.F.R. Part 61, Subpart~~s V and~~ FF.

B. Within thirty (30) days of the effective date of the CAFO, the Respondents shall identify the following equipment in the oil reclamation unit and the TDU that is in "volatile hazardous air pollutant" (VHAP) service, as that term is defined by 40 C.F.R. § 61.241:

1. pumps;
2. compressors;
3. pressure relief devices;
4. sampling connection systems;
5. open-ended valves or lines;
6. valves;
7. connectors;
8. surge control vessels;
9. bottoms receivers; and
10. control devices and systems.

The Respondents shall assume all the equipment is in VHAP service unless otherwise demonstrated in accordance with the requirements of 261.245(d).

C. Within sixty (60) days of the effective date of the CAFO, the Respondents shall submit a Subpart V Report to EPA, which includes the following information;

a. Identification of all equipment specified in Paragraph 77.B above;

b. Identification of all equipment that is in VHAP service;

c. Identification of all equipment that is not in VHAP service, along with documentation that meets the requirements of 40 C.F.R. § 61.245(d) which demonstrates that the equipment does not in VHAP service. The Report shall be submitted in accordance with Paragraphs 77.L and 77.M.

~~C~~D. If applicable, ~~W~~within ninety (90) days of the effective date of the CAFO, the Respondents shall implement a fugitive monitoring program in accordance with the requirements of 40 C.F.R.

Part 61, Subpart V.

~~D~~DE. If applicable, ~~W~~within ninety (90) days of the effective date of the CAFO, the Respondent shall submit the notice required by 40 C.F.R. § 61.247(a) to TCEQ.

~~E~~EF. Pursuant to 40 C.F.R. § 61.343(a)(1), within ninety (90) ~~ninety (90)~~ days of the effective date of the CAFO, the Respondents shall install, operate, and maintain a fixed roof and closed-vent system that routes all organic vapors from the following tanks set forth below to a control device:

1. Shaker Tank (T-30);
2. Surge Tank (T-34);
3. Condensate Water Tanks (T-3A, T3-B);

4. T-10 Series Tanks (T-10, T-11, T-12, T-13);

5. T-30 Series Tanks (T-31, T-32, T-33);

6. Filtrate Mix Tank (T-5);

7. Filtrate Tank (T-6);

8. Filtrate Skim Tank (T-6A);

~~9. Waste Water Tanks (M3, M6, S1,S2);~~ and

~~10~~9. Centrifuge.

The fixed-roofs shall meet the requirements of 40 C.F.R. § 61.343(a)(1)(i), and the control devices shall be designed and operated in accordance with the requirements of 40 C.F.R. § 61.349. The emissions from the tanks shall be routed to a carbon adsorption system when the TOU is not operating or out of service. The carbon in the carbon adsorption systems used as control device shall be replaced immediately when carbon breakthrough is indicated. The devices shall be monitored ~~on a daily basis when emissions are routed to the device,~~ as required by 40 C.F.R. § 61.354(d).

~~F~~FG. Pursuant to 40 C.F.R. § 61.354(c), within ninety (90) days of the effective date of this CAFO, the Respondents shall install, calibrate, maintain, and operate according to manufacturer's specifications, devices to continuously monitor the control devices operations required by 40 C.F.R. § 61.349.

~~G~~GH. Pursuant to 40 C.F.R. § 61.345(a), within 180 ~~ninety (90)~~ days of the effective date of the CAFO, the Respondents shall install, operate, and maintain covers on Bins 1, 2, 3, 4, and the Centrifuge solid bins that meet the requirements of 40 C.F.R. § 61.345(a)(1). The cover and openings shall be in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at ~~and secured at~~ all times that waste is in the container except when it is necessary to

use the opening for waste loading, removal, inspection or sampling, as required by 40 C.F.R. § 61.345(a)(1)(ii). The Respondents shall monitor the cover and all openings for no detectable emissions initially and thereafter at least once per year by the methods specified in 40 C.F.R. § 61.355(h).

HHI. The Respondents shall use a submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

JI. Within ninety (90) days of the effective date of the CAFO, the Respondents shall conduct performance tests for the TOU and the carbon adsorption system to demonstrate compliance with the requirements of 40 C.F.R. § 61.349. The performance tests shall be conducted in accordance with the requirements of 40 C.F.R. § 61.355. A copy of the performance test results shall be submitted to EPA within thirty (30) days of completion of the performance tests. The performance tests results shall be submitted in accordance with Paragraphs 77.L and 77.M.

JJK. Within 210 days of six (6) months of the effective date of the CAFO, the Respondent shall submit a written report to EPA. The Report shall include the following:

;

21. If applicable, Aa copy of the fugitive emission program required by Paragraph 797.CD;

32. If applicable, Aa copy of the notice required by Paragraph 757.ED;

~~4~~3. Documentation showing compliance with Paragraphs 7~~9~~7.~~FE~~, 7~~9~~7.~~FG~~, 7~~9~~7.~~GH~~, and 7~~9~~7.~~HI~~. ~~This includes documentation that the control devices meet the requirements set forth in 40 C.F.R. § 61.349(a)(2); and~~

~~5. A copy of the performance tests required by Paragraph 79~~7~~.I.~~

~~K~~L. The reports identified in this Section~~Paragraphs 77.I and 77.J~~ must be accompanied by the following certification:

> "I certify under penalty of law that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

~~L~~M. All ~~The~~ Reports required under this Section shall be sent to the following:

Craig Lutz
Toxics Enforcement Section (6EN-AT)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

D. STIPULATED PENALTIES

~~80~~78. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 7~~2~~0.A.3, 7~~2~~0.A.6, 7~~2~~0.A.8, 7~~2~~0.A.9, 7~~2~~0.C.1, 7~~2~~0.C.5, 7~~2~~0.D.1, and 7~~2~~0.E.2

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000

16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Certain Interim Operating Requirements – Paragraphs 7~~2~~0.A.4, 7~~2~~0.A.5, and 7~~2~~0.A.7

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

d. Failure to Comply with Additional Requirements – Section IV.C

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

~~81~~79. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in

accordance with the provisions of Paragraph 7~~4~~2 herein. Interest and late charges shall be paid as stated in Paragraphs 7~~6~~4 - 7~~7~~5 herein.

8~~2~~0. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

E. DISPUTE RESOLUTION

8~~3~~1. If the Respondents object to any decision or directive of EPA in regard to Section III or IV.C, the Respondents shall notify each other and the following persons in writing of its objections, and the basis for those objections, within thirty (30) ~~fifteen (15)~~ calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

8~~4~~2. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional thirty (30) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the

agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

835. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 30-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 30-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

846. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

857. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way, any obligations of the Respondents under this CAFO, 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. If the Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IV.D.

F. FORCE MAJEURE

886. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite the Respondents' best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO.

897. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.G of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondents from asserting any claim of force majeure.

9088. The Respondent also shall provide notice orally or by electronic or facsimile transmission to the other Respondent not later than 24 hours after the time Respondent first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event, provided that the failure to give such notice shall not limit either Respondent's responsibilities under this CAFO.

8991. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.H of this CAFO.

920. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event caused any delay the Respondents' claimed was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event. If the Respondents carry this burden, the delay at issue shall be deemed not to be a violation of the affected obligation of this CAFO.

G. NOTIFICATION

931. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P.:

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

Section Manager
Industrial and Hazardous Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

H. MODIFICATION

942. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

I. RETENTION OF ENFORCEMENT RIGHTS

953. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

946. Except as herein provided, nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

975. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

968. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents 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 Complainant or the United States in the subsequent

ED_002427B_00006801-00039

proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

97~~9~~. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

J. INDEMNIFICATION OF EPA

98~~100~~. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

K. COSTS

99~~101~~. Each party shall bear its own costs and attorney's fees. Furthermore, each Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

L. TERMINATION

ED_002427B_00006801-00040

10~~2~~. At such time as the Respondents believe they have completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

M. EFFECTIVE DATE

10~~3~~1. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____

TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right or EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

ED_002427B_00006801-00045

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copies of the CAFO were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admit the jurisdictional allegations contained herein; however, the Respondents neither admit nor deny the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waive any right to contest the allegations and their right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consent to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903(15).

ED_002427B_00006803-00002

11. The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. "Owner" is defined in 30 T.A.C. § 335.1(107) [40 C.F.R. § 260.10] as "the person who owns a facility or part of a facility."

13. "Operator" is defined in 30 T.A.C. § 335.1(108) [40 C.F.R. § 260.10] as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

15. "Facility" is defined in 30 T.A.C. § 335.1(59) [40 C.F.R. § 260.10] as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA I.D. No. TSD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) [40 C.F.R. § 260.10].

18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

19. An oil reclamation unit is located at the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30) three mix tanks (T-31, T-32, and T-33), a centrifuge, and a surge tank (T-34) at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit were inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Processing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment),[1] storage, or disposal of hazardous waste.

24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

28. Recyclable materials ~~Hazardous wastes~~ destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

30. On various dates after June 15, 2008, certain ~~hazardous wastes~~recyclable materials were processed in the tanks identified in Paragraph 20.

31. The recyclable materials~~hazardous waste~~ identified in Paragraph 30 did not meet the exemption in 30 T.A.C. § 335.24(c) [40 C.F.R. § 261.6(a)(3)(iv)(C) ~~definition of "recyclable materials" as that term is defined in 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]~~ because the hazardous wastes

were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

~~32. The exemption for recyclable materials in 30 T.A.C. § 335.24(c) [40 C.F.R. § 261.6(a)(3) is not applicable for the hazardous waste identified in Paragraphs 30 – 31.~~

~~33~~32. The Respondent TD*X "processed" (treated) hazardous waste as that term is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] in the tanks identified in Paragraph 20.

33~~4~~. To date, neither the Respondent USET or Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the processing (treatment) ~~storage~~ of hazardous waste in the tanks identified in Paragraph 20.

34~~5~~. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by processing (treating) hazardous waste without a RCRA permit or interim status.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

35~~6~~. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

36~~7~~. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901

et seq."

37~~8~~. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

38~~9~~. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

39~~40~~. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

40~~1~~. Recyclable materials ~~Hazardous wastes~~ destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

41~~2~~. On various dates after June 15, 2008, certain recyclable materials ~~hazardous wastes~~ were fed into the TDU that did not meet the exemption in 30 T.A.C. § 335.24(c) [40 C.F.R. § 261.6(a)(3)(iv)(C) ~~definition of "recyclable materials, as that term is defined in 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]~~ because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

~~43. The exemption for recyclable materials in 30 T.A.C. § 335.24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous wastes identified in Paragraph 42.~~

~~44~~42. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10] as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

45~~3~~. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R.

§ 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

46~~4~~. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents to a gas treatment system. The oil is recovered by condensing vapor phase organic constituents in the gas treatment system. The vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, where it is burned.

45~~7~~. The separation of the organic contaminants from the hazardous waste in the TDU's indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

46~~8~~. To date, neither the Respondent USET nor Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

4~~9~~7. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a RCRA permit or interim status.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

~~50~~48. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~51~~49. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

5~~2~~0. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

5~~3~~1. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

5~~4~~2. On various dates after June 15, 2008, hazardous wastes were fed into the TDU.

5~~3~~5. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents to a gas treatment system. The oil is recovered by

condensing vapor phase organic constituents in the gas treatment system. The vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, where it is burned.

564. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10] as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

575. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

586. The burning of gases in the TDU's combustion chamber constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

597. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as

"any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

~~60~~58. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion.

~~61~~59. The combustion chamber of the TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

62~~0~~. The combustion chamber of the TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75)
[40 C.F.R. § 260.10] because it thermally processes (thermally treats) hazardous waste by burning hazardous waste using controlled flame combustion.

61~~3~~. To date, neither the Respondent USET nor Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

62~~4~~. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a RCRA permit or interim status.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

65~~3~~. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

6~~6~~4. Between on or about March 9, 2010, and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

6~~5~~7. The roll-off boxes identified in Paragraph 6~~4~~6 contained material which had entered the oil reclamation process and was being temporarily staged before undergoing subsequent stages of the reclamation process. The Respondent USET discontinued the use of the area called the "Y" for this purpose.

6~~6~~8. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

6~~7~~9. The roll-off boxes identified in Paragraph 6~~4~~6 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

~~70~~68. The Respondent USET had not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y".

~~71~~69. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a RCRA permit or interim status.

III. COMPLIANCE ORDER

7~~2~~0. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

1. As of the effective date of this CAFO, feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk

	Bulk Stations and Terminals (merchant wholesalers)		Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", and that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility.

3. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to EPA for approval, with a copy to TCEQ, interim limits on operating parameters, including, but not limited, to the following:

a. maximum hazardous waste feed rate to the rotary dryer;

b. limits on ash, semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic) (Cl_2 and HCl);

c. minimum rotary dryer temperature;

d. maximum gas/vapor flow rate to the Off-Gas Condensing Recovery System;

e. maximum Off-Gas Condensing Recovery System outlet temperature;

f. minimum combustion chamber temperature;

g. maximum gas/vapor flow rate to the combustion chamber;

h. other Off-Gas Condensing Recovery Systems operating parameter limits; and

i. any other operating parameter limits for air pollution control devices used.

The submittal shall include monitoring and recordkeeping requirements. The Respondents shall implement the operating parameter limits as approved or modified by TCEQ.

4. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).

5. Within ninety (90) days of the effective date of this CAFO, the Respondents shall reconfigure the TDU so that the non-condensable vent gases are routed to a thermal oxidizer unit (TOU) instead of the combustion chamber of the TDU. After the reconfiguration has occurred, for the purposes of Section III and IV.C of this CAFO only, references to the TDU shall include the TOU, unless otherwise indicated.

6. Within ninety (90) days of the effective date of this CAFO, the Respondent shall also submit to EPA for approval, with a copy to TCEQ, interim operating parameters for the TOU including, but not limited to:

a. minimum temperature of the TOU combustion chamber; and

b. maximum flue gas flow rate.

The Respondents shall implement the operating parameter limits as approved or modified by TCEQ.

7. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 63.1209. The Respondents shall use carbon monoxide and hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen. These CEMS shall be located in compliance with 40 C.F.R. Part 60, Appendix B requirements for rotary dryer emission point (EP-1), the combustion chamber emission point (EP-2), and the TOU. The

Respondents shall operate the TDU and the TOU in a manner that the one minute and hourly rolling averages are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(a).

8. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to TCEQ for approval, with a copy to EPA, a feedstream analysis plan prepared in accordance with 40 C.F.R. § 63.1209(c)(2). The Respondents shall implement the plan as approved or modified by TCEQ.

9. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA, with a copy to TCEQ. The Report shall include the following:

a. Identify the customer, the customer's SIC and NAICS code, copies of the relevant waste approval documents, and manifests for the previous six month period.

b. All time periods in where there were exceedances of the one minute and hourly rolling averages required under Paragraph 72.A.7.

c. The initial Report shall include documentation showing the installation dates of the equipment required by Paragraphs 72.A.4, A5, and A.7.

The Report may be submitted in an electronic format (i.e., compact disk). The Respondent may claim the report as confidential business information, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within ninety (90) days of the effective date of this CAFO, the Respondents shall submit to TCEQ, with a copy to EPA, an application for a Class 3 RCRA Permit Modification to permit the TDU as a miscellaneous unit under 40 C.F.R. Part 264, Subpart X in accordance with

30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33]. This permit application will serve as the Documentation of Compliance required by 40 C.F.R. § 63.1211(c).

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU, the TOU, and the oil reclamation unit, including an engineering report, waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) [40 C.F.R. §§ 264.341, 264.347, and 264.351].

3. The Respondents shall also request that the final RCRA permit also include the following:

a. The applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE;

b. The feedstock limitations set forth in Paragraph 68.F;

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers; and

d. Any risk-based terms and conditions necessary to protect human health and the environment.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ and EPA within the deadline set forth in Paragraph 72.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date.

5. By no later than two and one-half years (30 months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and have a final RCRA Subpart X permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with

30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33], and which incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE. In the event that TCEQ does not issue a final RCRA Subpart X permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

C. Notice of Intent to Comply (NIC)/Public Participation

1. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b), and an initial notification pursuant to 40 C.F.R. § 63.9(b).

2. The Respondents shall make the draft NIC available to the public either (a) at least thirty (30) days prior to the public meeting pursuant to 40 C.F.R. § 63.1210(b)(2), or (b) at a time approved by EPA and TCEQ.

3. The Respondents shall provide the following notices to the public:

a. Notice of Receipt of Application and Intent to Obtain Permit pursuant to 30 T.A.C. §§ 39.418 and 39.509. Notice of the public meeting required by 30 T.A.C. § 305.69(d)(4) shall be included with the Notice of Receipt of Application and Intent to Obtain Permit, as required by 30 T.A.C. § 39.418;

b. Notice to the public of the Notice of Application and Preliminary Decision pursuant to 30 T.A.C. §§ 39.419 and 39.509; and

c. NIC public meeting required by 40 C.F.R. § 63.1210(c)(3).

4. The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d)(4)

[40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) day comment period. This public meeting shall also be coordinated with the NIC public meeting required by 40 C.F.R. § 63.1210(c).

5. The Respondents shall submit to TCEQ and EPA the final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.

6. The failure to timely submit the final NIC to TCEQ and EPA no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.

D. Startup, Shutdown, and Malfunction Plan

1. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval, with a copy to EPA. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and 63.1206(c)(2). The Respondents shall comply with any instructions or directives from TCEQ regarding approval, disapproval, or submission of any additional information.

E. Trial Burn

1. The Respondents shall perform a trial burn as set forth below. The trial burn is required to demonstrate compliance with the emissions standards of 40 C.F.R. Part 63, Subpart EEE, establish limits for the operating parameters provided by 40 C.F.R. § 61.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to TCEQ for approval, with a copy to EPA, a complete and approvable trial burn plan and a continuous monitoring system (CMS) performance test plan pursuant to the requirements of 40 C.F.R. §§ 63.7, 63.1207, and 63.1209. The trial burn plan shall also provide for a performance test to determine the efficiency and operating parameters of the condensers from the Off-Gas Condensing Recovery System, the capture efficiency, destruction and removal efficiency, and the actual nature, pattern, and quantity of emissions from EPN EP-1, EP-2, the TOU, and any other fugitive or point source emissions of the TDU system capable of routing off-gas from the TDU to the atmosphere, including its air contaminant control systems, product recovery systems, and treated material handling system.

3. The Respondents shall make the trial burn plan and CMS performance test plan available for public review upon issuance of the notice of NIC public meeting.

4. The Respondents shall implement the trial burn plan and the CMS performance test plan as approved by TCEQ, within ninety (90) days after approval of the trial burn plan and the CMS performance test plan. During the testing, the Respondents shall comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).

5. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations) that they have exceeded any emission standard for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except as provided in 40 C.F.R. § 63.1207(*l*)(1). The Respondents must make this determination within forty-five (45) days following completion of the trial burn. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

6. All analyses required by the trial burn plan shall be performed by a NELAC accredited laboratory or by a laboratory pre-approved by TCEQ.

7. Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), within ninety (90) days from completion of the trial burn and the CMS performance test, the Respondents shall submit a Notification of Compliance (NOC) to TCEQ and EPA documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under 40 C.F.R. § 63.1209. All data collected during the trial burn and the CMS performance test (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to TCEQ and EPA along with the NOC.

8. As of the date of the submission of the NOC, the Respondent shall comply with all operating requirements of the NOC, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219.

9. The failure to timely submit an NOC to TCEQ and EPA within ninety (90) days from completion of the trial burn and the CMS performance test shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

F. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification

System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is

"oil-bearing", and that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in its Final RCRA permit.

G. Submission, Revision, and Approval Process

1. For all applications or plans required be submitted to TCEQ for approval under this CAFO, TCEQ will review these applications or plans and issue only one Notice of Deficiency (NOD) to the Respondents in accordance with 30 T.A.C. §§ 281.3(c) and 281.19(a). The Respondents must provide an approvable response to TCEQ, with a copy to EPA, within thirty (30) days of receipt of the NOD. In the event that the Respondents fail to submit a timely and good-faith approvable NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline [thirty (30) days from the date of receipt of the NOD].

H. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33], and which incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE.

2. The Respondents may seek relief under the provisions of Section IV.F of the CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

I. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925(c)(3), 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subparts A and EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R.

§ 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.E of this CAFO.

J. Submissions

In all instances in which this Compliance Order requires written submissions to EPA and TCEQ, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

731. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

742. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza

SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

75~~3~~. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

76~~4~~. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

77~~5~~. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

78~~6~~. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned

ED_002427B_00006803-00027

representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. ADDITIONAL REQUIREMENTS

7~~9~~7. The Respondents shall undertake the following additional requirements:

A. The Respondents agree that the oil reclamation unit and the TDU are subject to the requirements of 40 C.F.R. Part 61, Subpart~~s V and~~ FF.

B. Within thirty (30) days of the effective date of the CAFO, the Respondents shall identify the following equipment in the oil reclamation unit and the TDU that is in "volatile hazardous air pollutant" (VHAP) service, as that term is defined by 40 C.F.R. § 61.241:

1. pumps;
2. compressors;
3. pressure relief devices;
4. sampling connection systems;
5. open-ended valves or lines;
6. valves;
7. connectors;
8. surge control vessels;
9. bottoms receivers; and
10. control devices and systems.

The Respondents shall assume all the equipment is in VHAP service unless otherwise demonstrated in accordance with the requirements of 261.245(d).

C. Within sixty (60) days of the effective date of the CAFO, the Respondents shall submit a Subpart V Report to EPA, which includes the following information;

a. Identification of all equipment specified in Paragraph 77.B above;

b. Identification of all equipment that is in VHAP service;

c. Identification of all equipment that is not in VHAP service, along with documentation that meets the requirements of 40 C.F.R. § 61.245(d) which demonstrates that the equipment does not in VHAP service. The Report shall be submitted in accordance with Paragraphs 77.L and 77.M.

~~C~~D. If applicable, ~~W~~within ninety (90) days of the effective date of the CAFO, the Respondents shall implement a fugitive monitoring program in accordance with the requirements of 40 C.F.R.

Part 61, Subpart V.

~~D~~E. If applicable, ~~W~~within ninety (90) days of the effective date of the CAFO, the Respondent shall submit the notice required by 40 C.F.R. § 61.247(a) to TCEQ.

~~E~~F. Pursuant to 40 C.F.R. § 61.343(a)(1), within ninety (90) ~~ninety (90)~~ days of the effective date of the CAFO, the Respondents shall install, operate, and maintain a fixed roof and closed-vent system that routes all organic vapors from the following tanks set forth below to a control device:

1. Shaker Tank (T-30);
2. Surge Tank (T-34);
3. Condensate Water Tanks (T-3A, T3-B);

4. T-10 Series Tanks (T-10, T-11, T-12, T-13);

5. T-30 Series Tanks (T-31, T-32, T-33);

6. Filtrate Mix Tank (T-5);

7. Filtrate Tank (T-6);

8. Filtrate Skim Tank (T-6A);

~~9. Waste Water Tanks (M3, M6, S1,S2);~~ and

~~10~~9. Centrifuge.

The fixed-roofs shall meet the requirements of 40 C.F.R. § 61.343(a)(1)(i), and the control devices shall be designed and operated in accordance with the requirements of 40 C.F.R. § 61.349. The emissions from the tanks shall be routed to a carbon adsorption system when the TOU is not operating or out of service. The carbon in the carbon adsorption systems used as control device shall be replaced immediately when carbon breakthrough is indicated. The devices shall be monitored ~~on a daily basis when emissions are routed to the device,~~ as required by 40 C.F.R. § 61.354(d).

~~F~~FG. Pursuant to 40 C.F.R. § 61.354(c), within ninety (90) days of the effective date of this CAFO, the Respondents shall install, calibrate, maintain, and operate according to manufacturer's specifications, devices to continuously monitor the control devices operations required by 40 C.F.R. § 61.349.

~~G~~GH. Pursuant to 40 C.F.R. § 61.345(a), within 180 ~~ninety (90)~~ days of the effective date of the CAFO, the Respondents shall install, operate, and maintain covers on Bins 1, 2, 3, 4, and the Centrifuge solid bins that meet the requirements of 40 C.F.R. § 61.345(a)(1). The cover and openings shall be in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at ~~and secured at~~ all times that waste is in the container except when it is necessary to

use the opening for waste loading, removal, inspection or sampling, as required by 40 C.F.R. § 61.345(a)(1)(ii). The Respondents shall monitor the cover and all openings for no detectable emissions initially and thereafter at least once per year by the methods specified in 40 C.F.R. § 61.355(h).

HHI. The Respondents shall use a submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

JI. Within ninety (90) days of the effective date of the CAFO, the Respondents shall conduct performance tests for the TOU and the carbon adsorption system to demonstrate compliance with the requirements of 40 C.F.R. § 61.349. The performance tests shall be conducted in accordance with the requirements of 40 C.F.R. § 61.355. A copy of the performance test results shall be submitted to EPA within thirty (30) days of completion of the performance tests. The performance tests results shall be submitted in accordance with Paragraphs 77.L and 77.M.

JJK. Within 210 days of six (6) months of the effective date of the CAFO, the Respondent shall submit a written report to EPA. The Report shall include the following:

;

21. If applicable, Aa copy of the fugitive emission program required by Paragraph 797.CD;

32. If applicable, Aa copy of the notice required by Paragraph 757.ED;

~~4~~3. Documentation showing compliance with Paragraphs 7~~9~~7.~~FE~~, 7~~9~~7.~~FG~~, 7~~9~~7.~~GH~~, and 7~~9~~7.~~HI~~. ~~This includes documentation that the control devices meet the requirements set forth in 40 C.F.R. § 61.349(a)(2); and~~

~~5. A copy of the performance tests required by Paragraph 79~~7.~~I.~~

~~K~~L. The reports identified in this Section~~Paragraphs 77.I and 77.J~~ must be accompanied by the following certification:

> "I certify under penalty of law that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

~~L~~M. All ~~The~~ Reports required under this Section shall be sent to the following:

Craig Lutz
Toxics Enforcement Section (6EN-AT)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

D. STIPULATED PENALTIES

~~80~~78. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 7~~2~~0.A.3, 7~~2~~0.A.6, 7~~2~~0.A.8, 7~~2~~0.A.9, 7~~2~~0.C.1, 7~~2~~0.C.5, 7~~2~~0.D.1, and 7~~2~~0.E.2

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000

16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Certain Interim Operating Requirements – Paragraphs 7~~2~~0.A.4, 7~~2~~0.A.5, and 7~~2~~0.A.7

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

d. Failure to Comply with Additional Requirements – Section IV.C

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

~~81~~79. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in

accordance with the provisions of Paragraph 7~~4~~2 herein. Interest and late charges shall be paid as stated in Paragraphs 7~~6~~4 - 7~~7~~5 herein.

8~~2~~0. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

E. DISPUTE RESOLUTION

8~~3~~1. If the Respondents object to any decision or directive of EPA in regard to Section III or IV.C, the Respondents shall notify each other and the following persons in writing of its objections, and the basis for those objections, within thirty (30) ~~fifteen (15)~~ calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

8~~4~~2. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional thirty (30) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the

agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

835. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 30-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 30-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

846. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

857. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way, any obligations of the Respondents under this CAFO, 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. If the Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IV.D.

F. FORCE MAJEURE

886. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite the Respondents' best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO.

897. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.G of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondents from asserting any claim of force majeure.

9088. The Respondent also shall provide notice orally or by electronic or facsimile transmission to the other Respondent not later than 24 hours after the time Respondent first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event, provided that the failure to give such notice shall not limit either Respondent's responsibilities under this CAFO.

8~~9~~~~1~~. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.H of this CAFO.

9~~2~~0. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event caused any delay the Respondents' claimed was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event. If the Respondents carry this burden, the delay at issue shall be deemed not to be a violation of the affected obligation of this CAFO.

G. NOTIFICATION

9~~3~~1. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P.:

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

Section Manager
Industrial and Hazardous Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

H. MODIFICATION

942. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

ED_002427B_00006803-00038

I. RETENTION OF ENFORCEMENT RIGHTS

953. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

946. Except as herein provided, nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

975. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

968. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents 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 Complainant or the United States in the subsequent

ED_002427B_00006803-00039

proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

97~~9~~. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

J. INDEMNIFICATION OF EPA

98~~100~~. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

K. COSTS

99~~101~~. Each party shall bear its own costs and attorney's fees. Furthermore, each Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

L. TERMINATION

ED_002427B_00006803-00040

10~~2~~. At such time as the Respondents believe they have completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

M. EFFECTIVE DATE

10~~3~~1. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____

TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right or EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

ED_002427B_00006803-00045

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copies of the CAFO were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

ED_002427B_00006803-00046

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admit the jurisdictional allegations contained herein; however, the Respondents neither admit nor deny the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waive any right to contest the allegations and their right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consent to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903(15).

11. The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. "Owner" is defined in 30 T.A.C. § 335.1(107) [40 C.F.R. § 260.10] as "the person who owns a facility or part of a facility."

13. "Operator" is defined in 30 T.A.C. § 335.1(108) [40 C.F.R. § 260.10] as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

15. "Facility" is defined in 30 T.A.C. § 335.1(59) [40 C.F.R. § 260.10] as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA I.D. No. TSD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) [40 C.F.R. § 260.10].

18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

19. An oil reclamation unit is located at the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30) three mix tanks (T-31, T-32, and T-33), a centrifuge, and a surge tank (T-34) at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit were inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Processing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment),[1] storage, or disposal of hazardous waste.

24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

28. Recyclable materials ~~Hazardous wastes~~ destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

30. On various dates after June 15, 2008, certain ~~hazardous wastes~~recyclable materials were processed in the tanks identified in Paragraph 20.

31. The recyclable materials~~hazardous waste~~ identified in Paragraph 30 did not meet the exemption in 30 T.A.C. § 335.24(c) [40 C.F.R. § 261.6(a)(3)(iv)(C) ~~definition of "recyclable materials" as that term is defined in 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]~~ because the hazardous wastes

were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

~~32. The exemption for recyclable materials in 30 T.A.C. § 335.24(c) [40 C.F.R. § 261.6(a)(3) is not applicable for the hazardous waste identified in Paragraphs 30 – 31.~~

3~~3~~2. The Respondent TD*X "processed" (treated) hazardous waste as that term is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] in the tanks identified in Paragraph 20.

3~~3~~4. To date, neither the Respondent USET or Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the processing (treatment) ~~storage~~ of hazardous waste in the tanks identified in Paragraph 20.

3~~4~~5. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by processing (treating) hazardous waste without a RCRA permit or interim status.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

3~~5~~6. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

3~~6~~7. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901

et seq."

37~~8~~. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

38~~9~~. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

39~~40~~. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

40~~1~~. Recyclable materials ~~Hazardous wastes~~ destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

41~~2~~. On various dates after June 15, 2008, certain recyclable materials ~~hazardous wastes~~ were fed into the TDU that did not meet the exemption in 30 T.A.C. § 335.24(c) [40 C.F.R. § 261.6(a)(3)(iv)(C) ~~definition of "recyclable materials, as that term is defined in 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]~~ because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

~~43. The exemption for recyclable materials in 30 T.A.C. § 335.24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous wastes identified in Paragraph 42.~~

~~44~~42. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10] as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

45~~3~~. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R.

§ 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

4~~6~~4. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents to a gas treatment system. The oil is recovered by condensing vapor phase organic constituents in the gas treatment system. An approximately 100 cfm vent stream of non-condensable gases is extracted to balance pressures within the system, filtered, and injected into the combustion chamber of the TDU, where it is burned.~~The vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, where it is burned.~~

4~~5~~7. The separation of the organic contaminants from the hazardous waste in the TDU's indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

4~~6~~8. To date, neither the Respondent USET nor Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

4~~9~~7. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R.
§ 270.1(b)] by thermally processing (thermally treating) hazardous waste without a RCRA permit or interim status.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

~~50~~48. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~51~~49. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901
et seq."

5~~2~~0. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

5~~3~~1. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

5~~4~~2. On various dates after June 15, 2008, hazardous wastes were fed into the TDU.

53~~5~~. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents to a gas treatment system. The oil is recovered by condensing vapor phase organic constituents in the gas treatment system. An approximately 100 cfm vent stream of non-condensable gases (from the heating of hazardous waste to a gaseous state) is extracted to balance pressures within the system, filtered, and injected into the combustion chamber of the TDU, where it is burned.~~The vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, where it is burned.~~

56~~4~~. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10] as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

57~~5~~. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in

accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

586. The burning of gases in the TDU's combustion chamber constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

597. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as "any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

6058. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion.

6159. The combustion chamber of the TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

620. The combustion chamber of the TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75)
[40 C.F.R. § 260.10] because it thermally processes (thermally treats) hazardous waste by burning hazardous waste using controlled flame combustion.

613. To date, neither the Respondent USET nor Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

624. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and

30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a RCRA permit or interim status.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

6~~5~~3. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

6~~6~~4. Between on or about March 9, 2010, and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

6~~5~~7. The roll-off boxes identified in Paragraph 6~~4~~6 contained material which had entered the oil reclamation process and was being temporarily staged before undergoing subsequent stages of the reclamation process. The Respondent USET discontinued the use of the area called the "Y" for this purpose.

6~~6~~8. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

6~~7~~9. The roll-off boxes identified in Paragraph 6~~4~~6 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

~~70~~68. The Respondent USET had not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y".

~~71~~69. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA,

42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a RCRA permit or interim status.

III. COMPLIANCE ORDER

720. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

1. As of the effective date of this CAFO, feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products

4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", and that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility.

3. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to EPA for approval, with a copy to TCEQ, interim limits on operating parameters, including, but not limited, to the following:

a. maximum hazardous waste feed rate to the rotary dryer;

b. limits on ash, semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic) (Cl_2 and HCl);

c. minimum rotary dryer temperature;

d. maximum gas/vapor flow rate to the Off-Gas Condensing Recovery System;

e. maximum Off-Gas Condensing Recovery System outlet temperature;

f. minimum combustion chamber temperature;

g. maximum gas/vapor flow rate to the combustion chamber;

h. other Off-Gas Condensing Recovery Systems operating parameter limits; and

i. any other operating parameter limits for air pollution control devices used.

The submittal shall include monitoring and recordkeeping requirements. The Respondents shall implement the operating parameter limits as approved or modified by TCEQ.

4. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).

5. Within ninety (90) days of the effective date of this CAFO, the Respondents shall reconfigure the TDU so that the non-condensable vent gases are routed to a thermal oxidizer unit (TOU) instead of the combustion chamber of the TDU. After the reconfiguration has occurred, for the purposes of Section III and IV.C of this CAFO only, references to the TDU shall include the TOU, unless otherwise indicated.

6. Within ninety (90) days of the effective date of this CAFO, the Respondent shall also submit to EPA for approval, with a copy to TCEQ, interim operating parameters for the TOU including, but not limited to:

a. minimum temperature of the TOU combustion chamber; and

b. maximum flue gas flow rate.

The Respondents shall implement the operating parameter limits as approved or modified by TCEQ.

7. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements

of 40 C.F.R. § 63.1209. The Respondents shall use carbon monoxide and hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen. These CEMS shall be located in compliance with 40 C.F.R. Part 60, Appendix B requirements for rotary dryer emission point (EP-1), the combustion chamber emission point (EP-2), and the TOU. The Respondents shall operate the TDU and the TOU in a manner that the one minute and hourly rolling averages are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(a).

8. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to TCEQ for approval, with a copy to EPA, a feedstream analysis plan prepared in accordance with 40 C.F.R. § 63.1209(c)(2). The Respondents shall implement the plan as approved or modified by TCEQ.

9. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA, with a copy to TCEQ. The Report shall include the following:

a. Identify the customer, the customer's SIC and NAICS code, copies of the relevant waste approval documents, and manifests for the previous six month period.

b. All time periods in where there were exceedances of the one minute and hourly rolling averages required under Paragraph 72.A.7.

c. The initial Report shall include documentation showing the installation dates of the equipment required by Paragraphs 72.A.4, A5, and A.7.

The Report may be submitted in an electronic format (i.e., compact disk). The Respondent may claim the report as confidential business information, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within ninety (90) days of the effective date of this CAFO, the Respondents shall submit to TCEQ, with a copy to EPA, an application for a Class 3 RCRA Permit Modification to permit the TDU as a miscellaneous unit under 40 C.F.R. Part 264, Subpart X in accordance with 30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33]. This permit application will serve as the Documentation of Compliance required by 40 C.F.R. § 63.1211(c).

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU, the TOU, and the oil reclamation unit, including an engineering report, waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) [40 C.F.R. §§ 264.341, 264.347, and 264.351].

3. The Respondents shall also request that the final RCRA permit also include the following:

a. The applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE;

b. The feedstock limitations set forth in Paragraph 68.F;

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers; and

d. Any risk-based terms and conditions necessary to protect human health and the environment.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ and EPA within the deadline set forth in Paragraph 72.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date.

5. By no later than two and one-half years (30 months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and have a final RCRA Subpart X permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33], and which incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE. In the event that TCEQ does not issue a final RCRA Subpart X permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

C. Notice of Intent to Comply (NIC)/Public Participation

1. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b), and an initial notification pursuant to 40 C.F.R. § 63.9(b).

2. The Respondents shall make the draft NIC available to the public either (a) at least thirty (30) days prior to the public meeting pursuant to 40 C.F.R. § 63.1210(b)(2), or (b) at a time approved by EPA and TCEQ.

3. The Respondents shall provide the following notices to the public:

a. Notice of Receipt of Application and Intent to Obtain Permit pursuant to 30 T.A.C.

§§ 39.418 and 39.509. Notice of the public meeting required by 30 T.A.C. § 305.69(d)(4) shall be included with the Notice of Receipt of Application and Intent to Obtain Permit, as required by 30 T.A.C. § 39.418;

b. Notice to the public of the Notice of Application and Preliminary Decision pursuant to 30 T.A.C. §§ 39.419 and 39.509; and

c. NIC public meeting required by 40 C.F.R. § 63.1210(c)(3).

4. The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d)(4) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) day comment period. This public meeting shall also be coordinated with the NIC public meeting required by 40 C.F.R. § 63.1210(c).

5. The Respondents shall submit to TCEQ and EPA the final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.

6. The failure to timely submit the final NIC to TCEQ and EPA no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.

D. Startup, Shutdown, and Malfunction Plan

1. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval, with a copy to EPA. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and

63.1206(c)(2). The Respondents shall comply with any instructions or directives from TCEQ regarding approval, disapproval, or submission of any additional information.

E. Trial Burn

1. The Respondents shall perform a trial burn as set forth below. The trial burn is required to demonstrate compliance with the emissions standards of 40 C.F.R. Part 63, Subpart EEE, establish limits for the operating parameters provided by 40 C.F.R. § 61.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to TCEQ for approval, with a copy to EPA, a complete and approvable trial burn plan and a continuous monitoring system (CMS) performance test plan pursuant to the requirements of 40 C.F.R. §§ 63.7, 63.1207, and 63.1209. The trial burn plan shall also provide for a performance test to determine the efficiency and operating parameters of the condensers from the Off-Gas Condensing Recovery System, the capture efficiency, destruction and removal efficiency, and the actual nature, pattern, and quantity of emissions from EPN EP-1, EP-2, the TOU, and any other fugitive or point source emissions of the TDU system capable of routing off-gas from the TDU to the atmosphere, including its air contaminant control systems, product recovery systems, and treated material handling system.

3. The Respondents shall make the trial burn plan and CMS performance test plan available for public review upon issuance of the notice of NIC public meeting.

4. The Respondents shall implement the trial burn plan and the CMS performance test plan as approved by TCEQ, within ninety (90) days after approval of the trial burn plan and the CMS performance test plan. During the testing, the Respondents shall comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).

5. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations) that they have exceeded any emission standard for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except as provided in 40 C.F.R. § 63.1207(*l*)(1). The Respondents must make this determination within forty-five (45) days following completion of the trial burn. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

6. All analyses required by the trial burn plan shall be performed by a NELAC accredited laboratory or by a laboratory pre-approved by TCEQ.

7. Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), within ninety (90) days from completion of the trial burn and the CMS performance test, the Respondents shall submit a Notification of Compliance (NOC) to TCEQ and EPA documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under 40 C.F.R. § 63.1209. All data collected during the trial burn and the CMS performance test (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to TCEQ and EPA along with the NOC.

8. As of the date of the submission of the NOC, the Respondent shall comply with all operating requirements of the NOC, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219.

9. The failure to timely submit an NOC to TCEQ and EPA within ninety (90) days from completion of the trial burn and the CMS performance test shall result in the termination of the

Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

F. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas

5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", and that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in its Final RCRA permit.

G. Submission, Revision, and Approval Process

1. For all applications or plans required be submitted to TCEQ for approval under this CAFO, TCEQ will review these applications or plans and issue only one Notice of Deficiency (NOD) to the Respondents in accordance with 30 T.A.C. §§ 281.3(c) and 281.19(a). The Respondents must provide an approvable response to TCEQ, with a copy to EPA, within thirty (30) days of receipt of the NOD. In the event that the Respondents fail to submit a timely and good-faith approvable NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline [thirty (30) days from the date of receipt of the NOD].

H. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and

270.30 – 270.33], and which incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE.

2. The Respondents may seek relief under the provisions of Section IV.F of the CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

I. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925(c)(3), 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subparts A and EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R.

§ 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.E of this CAFO.

J. Submissions

In all instances in which this Compliance Order requires written submissions to EPA and TCEQ, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

7~~3~~1. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

7~~4~~2. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency

Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch

U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

7~~5~~3. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

7~~6~~4. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

7~~7~~5. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion

of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

786. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. ADDITIONAL REQUIREMENTS

797. The Respondents shall undertake the following additional requirements:

A. The Respondents agree that the oil reclamation unit and the TDU are subject to the requirements of 40 C.F.R. Part 61, Subpart~~s V and~~ FF.

B. Within thirty (30) days of the effective date of the CAFO, the Respondents shall identify the following equipment in the oil reclamation unit and the TDU that is in "volatile hazardous air pollutant" (VHAP) service, as that term is defined by 40 C.F.R. § 61.241:

1. pumps;
2. compressors;
3. pressure relief devices;
4. sampling connection systems;
5. open-ended valves or lines;
6. valves;

7. connectors;

8. surge control vessels;

9. bottoms receivers; and

10. control devices and systems.

The Respondents shall assume all the equipment is in VHAP service unless otherwise demonstrated in accordance with the requirements of 261.245(d).

C. Within sixty (60) days of the effective date of the CAFO, the Respondents shall submit a Subpart V report to EPA, which includes the following information:

a. Identification of all equipment specified in Paragraph 77.B above;

b. Identification of all equipment that is in VHAP service;

c. Identification of all equipment that is not in VHAP service, along with documentation that meets the requirements of 40 C.F.R. § 61.245(d) which demonstrates that the equipment does not in VHAP service. The Report shall be submitted in accordance with Paragraphs 77.L and 77.M.

~~C~~D. If applicable, ~~W~~within ninety (90) days of the effective date of the CAFO, the Respondents shall implement a fugitive monitoring program in accordance with the requirements of 40 C.F.R.

Part 61, Subpart V.

~~D~~DE. If applicable, ~~W~~within ninety (90) days of the effective date of the CAFO, the Respondent shall submit the notice required by 40 C.F.R. § 61.247(a) to TCEQ.

~~E~~EF. Pursuant to 40 C.F.R. § 61.343(a)(1), within ninety (90) ~~ninety (90)~~ days of the effective date of the CAFO, the Respondents shall install, operate, and maintain a fixed roof and closed-vent system that routes all organic vapors from the following tanks set forth below to a control device:

1. Shaker Tank (T-30);
2. Surge Tank (T-34);
3. Condensate Water Tanks (T-3A, T3-B);
4. T-10 Series Tanks (T-10, T-11, T-12, T-13);
5. T-30 Series Tanks (T-31, T-32, T-33);
6. Filtrate Mix Tank (T-5);
7. Filtrate Tank (T-6);
8. Filtrate Skim Tank (T-6A);
9. ~~Waste Water Tanks (M3, M6, S1,S2);~~ and
10. Centrifuge.

The fixed-roofs shall meet the requirements of 40 C.F.R. § 61.343(a)(1)(i), and the control devices shall be designed and operated in accordance with the requirements of 40 C.F.R. § 61.349. The emissions from the tanks shall be routed to a carbon adsorption system when the TOU is not operating or out of service. The carbon in the carbon adsorption systems used as control device shall be replaced immediately when carbon breakthrough is indicated. The devices shall be monitored ~~on a daily basis when emissions are routed to the device,~~ as required by 40 C.F.R. § 61.354(d).

~~F~~FG. Pursuant to 40 C.F.R. § 61.354(c), within ninety (90) days of the effective date of this CAFO, the Respondents shall install, calibrate, maintain, and operate according to

manufacturer's specifications, devices to continuously monitor the control devices operations required by 40 C.F.R. § 61.349.

~~G~~GH. Pursuant to 40 C.F.R. § 61.345(a), within 180 ~~ninety (90)~~ days of the effective date of the CAFO, the Respondents shall install, operate, and maintain covers on Bins 1, 2, 3, 4, and the Centrifuge solid bins that meet the requirements of 40 C.F.R. § 61.345(a)(1). The cover and openings shall be in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at ~~and secured at~~ all times that waste is in the container except when it is necessary to use the opening for waste loading, removal, inspection or sampling, as required by 40 C.F.R. § 61.345(a)(1)(ii). The Respondents shall monitor the cover and all openings for no detectable emissions initially and thereafter at least once per year by the methods specified in 40 C.F.R. § 61.355(h).

~~H~~HI. The Respondents shall use a submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

~~J~~JI. Within _____ ~~ninety (90)~~ days of the effective date of the CAFO, the Respondents shall conduct performance tests for the TOU and the carbon adsorption system to demonstrate compliance with the requirements of 40 C.F.R. § 61.349. The performance tests shall be conducted in accordance with the requirements of 40 C.F.R. § 61.355. A copy of the performance test results shall be submitted to EPA within thirty (30) days of completion of the performance tests. The performance tests results shall be submitted in accordance with Paragraphs 77.L and 77.M.

~~J~~JK. Within 210 days of ~~six (6) months of~~ the effective date of the CAFO, the Respondent shall submit a written report to EPA. The Report shall include the following:

~~1. A Subpart V report, which includes the following information; copy of the equipment list required by Paragraph 79.B~~

~~a. Identification of all equipment specified in Paragraph 77.B above;~~

~~b. Identification of all equipment that is in VHAP service;~~

~~c. Identification of all equipment that is not in VHAP service, along with documentation that meets the requirements of 40 C.F.R. § 61.245(d) which demonstrates that the equipment does not in VHAP service.~~

~~;~~

~~2~~1. If applicable, ~~A~~a copy of the fugitive emission program required by Paragraph 79~~7~~.~~C~~D;

~~3~~2. If applicable, ~~A~~a copy of the notice required by Paragraph 7~~5~~7.E~~D~~;

4~~3~~. Documentation showing compliance with Paragraphs 79~~7~~.F~~E~~, 79~~7~~.F~~G~~, 79~~7~~.G~~H~~, and 79~~7~~.H~~I~~. ~~This includes documentation that the control devices meet the requirements set forth in 40 C.F.R. § 61.349(a)(2); and~~

~~5. A copy of the performance tests required by Paragraph 79~~7~~.I.~~

~~K~~L. The reports identified in this Section~~Paragraphs 77.I and 77.J~~ must be accompanied by the following certification:

> "I certify under penalty of law that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

~~L~~M. All ~~The~~ Reports required under this Section shall be sent to the following:

Craig Lutz

Toxics Enforcement Section (6EN-AT)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

D. STIPULATED PENALTIES

~~80~~78. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 7~~2~~0.A.3, 7~~2~~0.A.6, 7~~2~~0.A.8, 7~~2~~0.A.9, 7~~2~~0.C.1, 7~~2~~0.C.5, 7~~2~~0.D.1, and 7~~2~~0.E.2

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Certain Interim Operating Requirements – Paragraphs 7~~2~~0.A.4, 7~~2~~0.A.5, and 7~~2~~0.A.7

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

d. Failure to Comply with Additional Requirements – Section IV.C

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

~~81~~79. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 74~~2~~2 herein. Interest and late charges shall be paid as stated in Paragraphs 7~~6~~4 - 7~~7~~5 herein.

8~~2~~0. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

E. DISPUTE RESOLUTION

8~~3~~1. If the Respondents object to any decision or directive of EPA in regard to Section III or IV.C, the Respondents shall notify each other and the following persons in writing of its objections, and the basis for those objections, within thirty (30) ~~fifteen (15)~~ calendar days of receipt of EPA's decision or directive:

Associate Director

Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

84~~1~~2. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional thirty (30) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

83~~4~~5. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 30-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 30-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

846. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

857. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way, any obligations of the Respondents under this CAFO, 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. If the Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IV.D.

F. FORCE MAJEURE

886. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite the Respondents' best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO.

897. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.G

of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondents from asserting any claim of force majeure.

~~90~~88. The Respondent also shall provide notice orally or by electronic or facsimile transmission to the other Respondent not later than 24 hours after the time Respondent first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event, provided that the failure to give such notice shall not limit either Respondent's responsibilities under this CAFO.

8~~9~~91. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.H of this CAFO.

9~~2~~0. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event

caused any delay the Respondents' claimed was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event. If the Respondents carry this burden, the delay at issue shall be deemed not to be a violation of the affected obligation of this CAFO.

G. NOTIFICATION

931. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P.:

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC

98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

Section Manager
Industrial and Hazardous Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

H. MODIFICATION

942. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

I. RETENTION OF ENFORCEMENT RIGHTS

953. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

946. Except as herein provided, nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and

criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

975. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

968. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents 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 Complainant or 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 this CAFO.

979. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

ED_002427B_00006811-00040

J. INDEMNIFICATION OF EPA

98~~100~~. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

K. COSTS

99~~101~~. Each party shall bear its own costs and attorney's fees. Furthermore, each Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

L. TERMINATION

100~~2~~. At such time as the Respondents believe they have completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

M. EFFECTIVE DATE

10~~3~~1. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____

TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right or EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

ED_002427B_00006811-00045

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copies of the CAFO were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

CONFIDENTIAL SETTLEMENT COMMUNICATION

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents deny any liability to the United States arising out of the transaction or occurrences alleged in this CAFO. Respondents also deny the truth of any allegations in this CAFO except the allegations pertaining to venue and subject matter jurisdiction in Section II.A. of this CAFO.~~admits the jurisdictional allegations herein; however, the Respondents neither admits nor denies the specific factual allegations contained in this CAFO.~~

4. The Respondents explicitly waives any right to contest the allegations and their right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are either specifically set forth herein, or are alleged violations of 40 C.F.R. Part 61; Subpart FF, for which injunctive relief is specified in Section IV.C of this CAFO.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization,

ED_002427B_00006821-00002

government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

~~10.~~The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. ~~11.~~10. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

Formatted: Bullets and Numbering

~~11.~~The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. ~~13.~~11. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

Formatted: Bullets and Numbering

~~14.~~12. "Owner" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

~~15.~~13. "Operator" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

~~16.~~14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

~~17.~~15. "Facility" is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

~~18.~~16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA I.D. No. TSD069452340, Permit No. HW-50052-001.

~~19.~~17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

~~20.~~18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

~~21.~~19. ~~The Respondent USET has a~~An oil reclamation unit is located ~~on~~at the facility identified in Paragraph 16.

~~22.~~20. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30) three mix tanks (T-31, T-32, and T-33), a centrifuge, and a surge tank (T-34) at the oil reclamation unit.

~~23.~~21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

~~24.~~22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. ALLEGED VIOLATIONS

Count One – Processing Hazardous Waste Without a Permit or Interim Status

~~25.~~23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment),[1] storage, or disposal of hazardous waste.

~~26.~~24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~27.~~25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

~~28.~~26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as *that* term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

Formatted: Bullets and Numbering

28. Recyclable materials identified in 30 T.A.C. § 335.24(c) [40 C.F.R. §261.6(a)(3)] are not subject to regulation under Subchapters B-I or O of Chapter 335, 30 T.A.C. Chapters 1, 3, 10, 17, 20, 31, 39, 40, 50, 70, 80, 86, 261 or 305, except as provided in 30 T.A.C. § 335.24(g) and (h) [40 C.F.R. Parts 262 through 268, 270 or 124].

29. The Respondent USET notified the Texas Commission on Environmental Quality (TCEQ) ~~of this activity~~that it reclaims oil from oil-bearing hazardous wastes from petroleum refining, production and transportation practices in accordance with 40 C.F.R. § 261.6(a)(3)(iv)(C).

~~30.~~EPA has not promulgated a definition of "oil bearing hazardous wastes from petroleum refining, production and transportation practices" in its regulations.

30. ~~Hazardous wastes~~ Recyclable materials destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

31. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the

> treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

32. On various dates ~~between~~ after June 15, 2008, ~~and the present,~~ certain recyclable materials ~~hazardous wastes~~ were processed in the tanks identified in Paragraph 20.

33. Some of ~~T~~the ~~hazardous waste identified~~ recyclable materials referred to in Paragraph 30 did not meet the exemption ~~definition of "recyclable materials" as that term is defined in 430 T.A.C. § 335.24(a)~~ [in 40 C.F.R. § 261.6(a)(3~~1~~)(iv)(C)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices." ~~EPA has not promulgated a defininitiondefinition of "oil bearing hazardous wastes from petroleum refining, production and transportation practices in its regulations. Recyclable materials identified in 30 T.A.C. § 335.24(c) [40 C.F.R. §261.6(a)(3)] are not subject to regulation under Subchapters B-I or O of Chapter 335, 30 T.A.C. Chapters 1, 3, 10, 17, 20, 31, 39, 40, 50, 70, 80, 86, 261 or 305, except as provided in 30 T.A.C. § 335.24(g) and (h) [parts 262 through 268, 270 or 124].~~

~~34. The exemption for recyclable materials in 30 T.A.C. §335.24(c) [40 C.F.R.~~

~~§ 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraphs 30 – 31.~~ Respondent USET ceased the receipt of the hazardous waste identified in Paragraphs ~~30-33~~1.

~~35.~~34. The Respondents TD*X "processed" (treated) hazardous waste as that term is defined in 30 T.A.C. § 335.1(117) (40 C.F.R. § 260.10) in the tanks identified in Paragraph 20.

~~36.~~35. To date, neither the Respondent USET or Respondent TD*X ha~~ve~~s applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste in the tanks identified in Paragraph 20.

~~37.~~36. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by processing (treating) hazardous waste without a permit~~.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

~~38.~~37. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~39.~~38. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~40.39.~~ "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

~~41.40.~~ The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

41. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]. ~~The Respondent USET notified the TCEQ of this activity.~~

Formatted: Bullets and Numbering

42. Recyclable materials identified in 30 T.A.C. § 335.24(c) [40 C.F.R. §261.6(a)(3)] are not subject to regulation under Subchapters B-I or O of Chapter 335, 30 T.A.C. Chapters 1, 3, 10, 17, 20, 31, 39, 40, 50, 70, 80, 86, 261 or 305, except as provided in 30 T.A.C. § 335.24(g) and (h) [parts 262 through 268, 270 or 124].

43. The Respondent USET notified the ~~Texas Commission on Environmental Quality (TCEQ)~~ that it reclaims oil from oil-bearing hazardous wastes from petroleum refining, production and transportation practices in accordance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

~~42.44.~~ EPA has not promulgated a definition of "oil bearing hazardous wastes from petroleum refining, production and transportation practices" in its regulations.

~~43.45.~~ Recyclable materials ~~Hazardous wastes~~ destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

46. On various dates ~~between~~ after June 15, 2008 ~~and the present~~, certain ~~hazardous wastes~~Recyclable Materials were fed into the TDU that did not meet the exemption in 40 C.F.R. § 261.6(a)(3)(iv)(C) ~~definition of "recyclable materials" as that term is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)]~~ because the hazardous wastes were not "oil-bearing

Formatted: Bullets and Numbering

hazardous wastes from petroleum refining, production, and transportation practices."

Respondent USET ceased the receipt of these hazardous wastes.

~~47.The exemption for recyclable materials in 30 T.A.C. §335.24(c) [40 C.F.R. 47.§ 261.6(a)(3)] is not applicable for to the hazardous waste identified in Paragraph 42.~~

~~45.~~47. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

~~46.~~48. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

~~47.~~49. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants ~~and to remove them~~ from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents~~,~~ ~~and transfers them~~ to a gas treatment

system~~ using a nitrogen carrier gas~~. The oil is ~~then~~ recovered by condensing ~~it~~ vapor phase organic constituents in the gas treatment system. The noncondensable gases are recirculated to the heated rotary dryer. ~~The~~ An approximate 100 cfm vent stream of noncondensable gases is extracted to balance pressures within the system, filtered and injected into the combustion chamber of the TDU. ~~filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, and burned~~

~~48.~~50. The separation of the organic contaminants from the hazardous waste in the TDU's indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

~~49.~~51. To date, neither the Respondent USET nor Respondent TD*X has~~ve~~ applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

~~50.~~52. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by thermally processing (thermally treating) hazardous waste without a permit~~.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

~~51.~~53. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~52.~~54. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal

Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~53.~~55. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

~~54.~~56. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

~~54. The burning of gases in the TDU's combustion chamber constitutes thermal processing (thermal treatment), as term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].~~

~~55.~~57. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as

"any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

~~56.~~58. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion to indirectly heat a rotary dryer.

~~57.~~59. The TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

~~58.~~60. The TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] because it ~~thermally processes (thermally treats) hazardous waste by burning hazardous waste using controlled flame combustion~~meets the criteria established in Paragraphs II.B.57 and 58.

[EPA NEEDS TO LAY OUT ITS ARGUMENT THAT WE ARE BURNING HAZARDOUS WASTE TO GET TO PARAGRAPH 60].

~~59.~~61. To date, neither the Respondent USET nor Respondent TD*X has~~ve~~ applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

~~60.~~62. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by thermally processing (thermally treating) hazardous waste in an unpermitted incinerator.~~ The Respondent USET and the Respondent TD*X have proposed to reconfigure the TDU so that the vent stream of noncondensable gases is

routed to a thermal oxidizer unit (TOU) instead of the external combustion chamber of the TDU rotary dryer.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

~~61.~~63. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~62.~~64. Between on or about March 9, 2010, and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

~~63.~~65. The roll-off boxes identified in Paragraph 6~~2~~3 contained material which ~~was destined for the TDU~~had entered the oil reclamation process and was~~ere~~ being temporarily staged ~~to~~ before undergoing subsequent stages of the reclamation process. The Respondent USET discontinued the use of the area called the "Y" for this purpose.

~~64.~~66. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~65.~~67. The roll-off boxes identified in Paragraph 6~~2~~3 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

~~66.~~68. ~~To date, t~~The Respondent USET has~~d~~ not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y" between on or about March 9, 2010, and June 11, 2010.

~~67.~~69. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA,

42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a RCRA permit or interim status.

III. COMPLIANCE ORDER

68 70. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

1. As of the effective date of this CAFO, feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from petroleum refining, production and transporationtransportation practices. Oil-bearing hazardous waste from petroleum refining, production or transportation practices includes listed waste from specific Petroleum Refining Sources (F037, F038, K048, K049, K050, K051, K052, K169, and K170, K171, AND K172). Also acceptable are materials generated from processes meeting the definition established for facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site	213112	Support Activities for Oil and Gas Operations

	preparation and related construction activities performed on a contract or fee basis)		
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the processes meeting the definition of aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to ~~obtain a certification from the generator that the hazardous waste in question is oil-bearing hazardous waste from petroleum refining, production and transportation practices and~~ make a ~~separate, independent~~ determination ~~based on information provided by the generator as to~~ whether the hazardous waste in question is "oil-bearing," and that the hazardous waste actually came from petroleum refining, production, or transportation practices ~~at the generator's facility~~.

3. ~~Within seven (7)~~ ~~14 days of~~ Beginning on the effective date of this CAFO, the Respondents shall ~~submit to EPA and TCEQ for approval~~operate the TDU with~~,~~ the following interim limits on operating parameters~~, including, but not limited, to the following~~:

a. the maximum hazardous waste feed rate to the rotary dryer shall be 310 tons per day;

b. ~~limits on ash, semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic) (Cl_2 and HCl);~~ dryer feed material shall be limited as follows:

1. ~~to a~~ maximum organic halogen content of~~at~~ 4000 ppm,
2. maximum mercury concentration ~~in~~ of 260 ppm in feed to TDU,
3. no limit on Semi-Volatile Metals concentration in feed to TDU,
4. no limit on Low-Volatile Metals concentration in feed to TDU,
5. no limit on ash content of feed to TDU.

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 1" + Tab after: 1.25" + Indent at: 1.25"

Formatted: Bullets and Numbering

;

c. a minimum solids discharge temperature of 650°F from the rotary dryer or that treated product desorber solids must be considered to be untreated, be separately collected, and be reprocessed through the rotary dryers, except for the first two hours after start-up of feed when the product material does not contact the product thermocouple ~~temperature~~;

d. -maximum internal pressure in the rotary dryer of 0.00 inches (W.C.) with a 60-second time delay while~~en~~ the dryer feed is on; ~~gas/vapor flow rate to the Off-Gas Condensing Recovery System;~~

e. maximum Off-Gas Condensing Recovery System outlet temperature of 130°F with a 5-minute delay when the dryer feed is on;

f. minimum combustion chamber temperature of 1400°F with a 5-minute delay in the rotary dryer external furnace while the dryer feed is on; ~~and~~

g. maximum gas/vapor flow rate to the combustion chamber of 180 scfm on an hourly rolling average basis with a continuous supply of air to the process vent injectors including 20%

or more excess air required to completely combust the process vent gas while the dryer feed is on; and~~.~~

h. a HEPA filter shall be in service at all times on the TDU process vent stream while the dryer feed is on,

~~h. other Off-Gas Condensing Recovery Systems operating parameter limits; and~~

~~i. any other operating parameter limits for air pollution control devices used.~~

~~The submittal shall include monitoring and recordkeeping requirements.~~ The Respondents shall perform ~~implement the~~ monitoring and maintain records relating to these operating parameter limits, ~~as approved or modified by EPA and TCEQ.~~

4. Within ninety ~~180 (180)~~ 90 days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU that immediately and automatically cuts off the hazardous waste feed when any of the following conditions occurs: ~~in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).~~

a. ~~O~~oxygen content in the process vent greater than 7% with 1-minute delay;

b. internal pressure in the dryer feed breach greater than 0.0 inches W.C. with 1-minute delay;

c. temperature at the outlet of the gas treatment system condensers greater than 130°F with 5-minute delay;

d. temperature in the combustion zone of the dryer's external furnace less than 1,400°F with a 5-minute delay;

e. loss of operation of the gas treatment system carrier gas recirculation blower; ~~and~~

f. valve position of the process vent injection verified as directing the process vent away from the dryer's external furnace combustion zone with a 1-minute delay;

g. feed rate to the TDU exceeding 310 ton/day based on a twentyfour-hour rolling average; and

h. process vent flow rate exceeding 180 scfm based on a one-hour rolling average.

5. Within 120 days after the effective date of this CAFO, Respondents shall submit to the TCEQ an application for the construction and operation of the thermal oxidizer under Texas Health and Safety Code Chapter 382. Within ninety 180 (180) daysone year of the effective date of this CAFO, or within ninety (90) days after issuance of the permit required for installation of the reconfigured TDU under Tex. Health and Safety Code Chapter 382, whichever is later, the Respondents shall reconfigure the TDU so that the non-condensable vent gases and the tank vent closed-vent system gases are routed to a thermal oxidizer unit (TOU) instead of the external combustion chamber of the TDU rotary dryer. After the reconfiguration has occurred, for the purposes of Section III and IV.C of this CAFO only, references to the TDU shall include the TOU, unless otherwise indicated.

6. Within ninety 180 (180) days ofBeginning on the effective date of this CAFOinitial operation of the TOU, the Respondents shall comply with also submit to EPA and TCEQ for approval, the following interim operating parameters for the TOU including, but not limited to:

a. minimum operating temperature of 1,400°F in the TOU combustion chamber when the feed to the dryer is on; and

b. maximum flue gas flow rate based on a residence time of 0.5 seconds at 1400°F, as determined by engineering calculations at the measured process flow rate when the feed to the dryer is on; and.

c. maximum process vent gas/vapor flow rate to the TOU combustion chamber of 250 scfm, based on the design capacity of the TOU, with a continuous supply of air including 20% or more excess air required to completely combust the process vent gas while the dryer feed is on.

~~The Respondents shall implement the operating parameter limits as approved or modified by EPA and TCEQ.~~

7. Within thirty (30)~~ninety 180 (180)~~ days of the effective date of this CAFO, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 264.1033(pf) applicable to process heaters~~63.1209(a)~~. Within sixty (60) days of the initial operation of the reconfigured TDU, ~~T~~the Respondents shall also install, calibrate and operate temporary continuous monitors to verify that ~~use~~ carbon monoxide ~~and~~ or hydrocarbon ~~CEMS to demonstrate and monitor~~ is in compliance with the following carbon monoxide ~~and~~or hydrocarbon standards: (i) carbon monoxide less than 100 ppm by volume, or (ii) hydrocarbons less than 10 ppm by volume as propane, both over an hourly rolling average, dry basis corrected to 7 percent oxygen ~~of 40 C.F.R. Part 63, Subpart EEE§63.1203(a)(5), provided that any compliance demonstration required by that subsection shall be conducted pursuant to the performance test specified in Section III.D. of this CAFO.~~ The Respondents shall also use oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen. The~~se~~ CEMS shall be located in compliance with 40 C.F.R. Part 60, Appendix B requirements ~~for rotary dryer emission point (EP-1),~~ for the

combustion chamber emission point (EP2)~~, and~~~~following~~ for the TOU. The Respondents shall operate the TDU and the TOU in a manner that the ~~one minute and~~ hourly rolling averages are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(a)(6). After the compliance demonstration test required by Section III.D of this CAFO ~~thirty (30) days of operation of temporary CEMS~~, the Respondents are allowed to remove ~~those~~the temporary CEMS instruments provided that both the data from the compliance demonstration test confirm compliance with the CO or hydrocarbon standards of 40 C.F.R. §63.1203(a)(5), and the CEMS required by §264.1033(f) actuates the AWFCO. The Respondents shall submit a written demonstration as to these findings to the ~~TCEQ~~EPA in the compliance demonstration test report .

~~8. Within one hundred twenty270 (120270) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ for approval, a feedstream analysis plan prepared in accordance with 40 C.F.R. § 63.1209(c)(2). The Respondents shall implement the plan as approved or modified by EPA and TCEQ.~~

8~~9~~. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA, ~~with a copy to TCEQ~~, which contains ~~. The Report shall include~~ the following:

a. Identification of~~y~~ the customer, the customer's SIC and NAICS code, copies ~~of the relevant~~ waste approval documents, ~~including the generator's certification that the oil-bearing hazardous waste is from petroleum refining, production and transportation practices,~~ and manifests for the previous six month period.

[NEED TO DISCUSS DETAILS AND FORMAT OF INFORMATION NEEDED BY EPA]

~~b. All time periods in where there were exceedances of the one minute and hourly rolling averages required under Paragraph 68.A.7.~~

be. ~~The initial Report shall include d~~Documentation ~~showing the~~ of installation ~~dates~~ of the equipment required by Paragraphs 6~~9~~8.A.4, A5, and A.7.

The Report may be submitted in an electronic format (i.e., compact disk). The Respondents may claim the report as confidential business information, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within ~~ninety (90) days~~ one year of the effective date of this CAFO, the Respondents shall submit to TCEQ ~~and EPA~~, an application for a Class 3 RCRA Permit Modification to permit the TDU as a miscellaneous unit under 40 C.F.R. Part 264, Subpart X in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, ~~270.19,~~ 270.23, and 270.30 – 270.33). ~~This permit application will serve as the Documentation of Compliance required by 40 C.F.R. § 63.1211(c).~~ A copy of this permit modification application shall also be submitted to EPA.

2. The permit application shall also include ~~relevant~~ requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU, the TOU, and the oil reclamation unit, ~~including~~relating to ~~an engineering report,~~ waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351), except that with regard to continuous monitoring required by §264.347(a)(1) and (2), only continuous monitoring of combustion temperature shall be required.

3. The Respondents shall also request that the ~~final~~ issued RCRA permit ~~also~~ include the following:

a. ~~The relevant~~ Appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and 40 C.F.R. Part 63, Subparts ~~A and~~ EEE;

b. ~~The f~~Feedstock limitations ~~set forth in Paragraph 68.F~~; and

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers~~; and~~.

~~d. Any risk-based terms and conditions necessary to protect human health and the environment.~~

4. The failure to timely submit a Class 3 Permit Modification to TCEQ ~~and EPA~~ within the deadline set forth in Paragraph 6~~9~~8.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

5. By no later than ~~two~~ three and one-half years (~~30~~42 months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and ~~have a final~~ obtain issuance from the TCEQ of a RCRA Subpart X permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33), and which incorporates ~~the applicable~~ appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and 40 C.F.R. Part 63, Subparts ~~A and~~ EEE. In the event that TCEQ does not issue a final RCRA Subpart X permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

~~**C. Public NoticePublic Notice of Intent to Comply (NIC)/Public Participation**~~

~~1. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b), and an initial notification pursuant to 40 C.F.R. § 63.9(b).~~

~~2. The Respondents shall make the draft NIC available to the public either (a) at least thirty (30) days prior to the public meeting pursuant to 40 C.F.R. § 63.1210(b)(2), or (b) at a time approved by EPA and TCEQ.~~

~~3~~1. ~~The Respondents shall provide the following notices to the public:~~

~~a. Notice of Receipt of Application and Intent to Obtain Permit pursuant to 30 T.A.C. §§ 39.418 and 39.509. Notice of the public meeting required by 30 T.A.C. § 305.69(d)(4) shall be included with the Notice of Receipt of Application and Intent to Obtain Permit, as required by 30 T.A.C. § 39.418~~; and

~~b. Notice to the public of the Notice of Application and Preliminary Decision pursuant to 30 T.A.C. §§ 39.419 and 39.509; and.~~

~~c. NIC public meeting required by 40 C.F.R. § 63.1210(c)(3).~~

~~4~~2. ~~The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d)(4) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) day comment period. This public meeting shall also be coordinated with the NIC public meeting required by 40 C.F.R. § 63.1210(c).~~

~~5. The Respondents shall submit to TCEQ and EPA the final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.~~

~~6. The failure to timely submit the final NIC to TCEQ and EPA no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.~~

C~~D~~. Startup, Shutdown, and Malfunction Plan

1. Prior to operation of the reconfigured TDU, ~~Within one hundred twenty (120)~~240 ~~days of the effective date of this CAFO,~~ the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and ~~63.1206(c)(2)~~include provisions to comply with AWFCOs as per Section 698.A.4 of this CAFO during Startup, Shutdown and Malfunctions. The Respondents shall implement the Startup, Shutdown and Malfunction Plan as approved by TCEQ~~EC comply with any instructions or directives from TCEQ regarding approval, disapproval, or submission of any additional information~~. A copy of the Startup, Shutdown, and Malfunction Plan shall also be submitted to EPA.

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

D~~E~~. **~~Comprehensive Performance~~ Compliance Demonstration Test (CD~~P~~T)**

1. The Respondents shall perform a ~~comprehensive performance~~ compliance demonstration test (CD~~P~~T) as set forth below. The CD~~P~~T is required to demonstrate compliance with the appropriate emissions standards of 40 C.F.R. Part ~~63~~264, Subparts O and AA, and Part 63 Subpart EEE ~~EEE~~, establish limits for the operating parameters ~~provided by 40 C.F.R. § 61.1209, identified in the RCRA permit modification application required by Section III.B,~~ and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within one hundred twenty (90~~120~~) days of the effective date of this CAFO, the Respondents shall submit to ~~TCEQ and~~ EPA for approval a ~~complete and approvable~~

Formatted: Not Highlight

~~comprehensive performance test~~CP~~P~~DT plan and a continuous monitoring system (CMS) performance test plan pursuant to the appropriate requirements of 40 C.F.R. §~~§ 63.7, 63.1207, and 63.1209~~270.62(b)(2). The CD~~P~~T plan shall ~~also~~ provide for a performance test to determine the ~~efficiency and~~ operating parameters of the condensers from the Off-Gas Condensing Recovery System, the overall equivalent~~capture efficiency,~~ destruction and removal efficiency of the TDU system including the TOU~~, and the actual nature, pattern, and quantity of emissions from EPN EP-2, the TOU, and any other fugitive or point source emissions of the TDU system capable of routing off-gas from the TDU to the atmosphere, including its air contaminant control systems, product recovery systems, and treated material handling system.~~ Based on the principal operation of the TDU being the reclamation of oil-bearing hazardous waste from petroleum refining, production and transportation practices, the POHC for the DRE determination shall be the sum of all polynuclear aromatic hydrocarbon (PAH) compounds in the listings for K048-K052, K169-K172, F037 and F038, because PAH compounds have the highest difficulty of incineration of the organic constituents that are the basis for listing of these wastes.~~ Copies of the CDT plan and CMS test plan shall also be submitted to EPA.~~

~~3. The Respondents shall make the CPT plan and CMS performance test plan available for public review upon issuance of the notice of NIC public meeting.~~

~~4~~3. The Respondents shall implement the CD~~P~~T Plan and the CMS performance test plan as approved by ~~TCEQ and~~ EPA, within ninety (90) days after approval of the CD~~P~~T Plan and the CMS performance test plan, or within sixty (60) days after installation of the TOU, whichever is later. During the testing, the Respondents shall ~~comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).~~ assure that each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions

Formatted: Not Highlight

specified in the relevant standard. For the purpose of determining compliance with a relevant standard, the arithmetic mean of the results of the three runs shall apply. At~~s~~ a minimum during the CD~~P~~T, the Respondents shall demonstrate that the TDU and TOU achieve the following performance standards:

a. the equivalent "destruction and removal efficiency" (DRE) must be greater than 99.99% for ~~one~~the designated POHC fed to the TDU, as per 40 CFR 264, Subpart O, based on the mass feed rate of the POHC fed to the TDU and the mass emission rate of the same POHC present in the exhaust emissions from the combusted process vent, and the POHC shall be the total of the PAH compounds that are the basis for listing for waste codes K048-K052, K169-K172, F037 and F038;

b. the process vent must be controlled by combustion in a control device in accordance with RCRA emissions control standards for process vents as per 40 CFR Part 264, Subpart AA, by providing a minimum residence time of 0.50 seconds at a minimum temperature of 760°C;

c. the closed vent system emissions shall be controlled by combustion in a device that provides a minimum residence time of 0.5 seconds at a minimum temperature of 760°C (1,400°F), as per 40 CFR Part 61, Subpart FF; ~~and~~

d. d~~D~~ioxins and furans emissions shall be less than 0.240 ng TEQ/dscm corrected to 7 percent oxygen from the combusted process vent gas emission stream;

e. mercury emissions less than 8.1 µg/dscm corrected to 7% oxygen in the TOU stack;~~,~~

f. semi-volatile metals (Cd, Pb) emissions less than 10 µg/dscm corrected to 7% oxygen in the TOU stack;~~,~~

g. low-volatile metals (As, Be, Cr) emissions less than 23 µg/dscm combined emissions corrected to 7% oxygen in the TOU stack;~~,~~

h. carbon monoxide emissions less than 100 ppmV, or hydrocarbons emissions less than 10 ppmV as propane, over an hourly rolling average, dry basis, corrected to 7% oxygen in the TOU stack;~~,~~

i. hydrogen chloride and chlorine gas emissions less than 21 ppmV, combined emissions, expressed as chloride equivalent, dry basis, corrected to 7% oxygen in the TOU stack;~~,~~

j. particulate matter emissions less than 0.0016 gr/dscf corrected to 7% oxygen in the TOU stack;~~,~~and

k. during one run of the CDT, the organic compounds reduction efficiency for the TOU shall demonstrated to be greater than 95%, based on Method 18 organic concentration samples taken from the process vent, the tank vent closed vent system, and the TOU stack, and flow measurements made from these same points, using the equation as per 40 CFR § 61.355(i)(4).

4~~5~~. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations) that they have exceeded any emission standard for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except that the Respondents may burn hazardous waste for the purpose of conducting demonstration tests under revised operating conditions for the emission standard exceeded ~~except as provided in 40 C.F.R. § 63.1207(*l*)(1)~~. The Respondents must make this determination within ~~forty-five (45)~~ninety (90) days following completion of the C~~P~~DT. ~~The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).~~

~~6~~5. All analyses required by the CD~~P~~T plan shall be performed by a NELAC -accredited laboratory or by a laboratory pre-approved by TCEQ.

~~7~~6. ~~Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), w~~Within ninety (90) days from completion of the C~~P~~DT and the CMS performance test, the Respondents shall prepare and submit to ~~TCEQ and~~ EPA a ~~comprehensive test report~~ CDT report that includes results for the analysis of samples, determination of emissions, and raw data, as well as the results of any performance tests, opacity or visible emission observations, continuous monitoring system (CMS) performance evaluations, and/or other monitoring procedures or methods that were conducted. ~~Submit a Notification of Compliance (NOC) to TCEQ and EPA~~ The report shall document~~ing~~ compliance with the emission standards and continuous monitoring system requirements, and identify~~ing~~ the operating parameter limits ~~under 40 C.F.R. § 63.1209~~ for the minimum combustion chamber temperature. All data collected during the CD~~P~~T and the CMS performance test (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted as part of the CDT report~~to TCEQ and EPA along with the NOC test report. A copy of the CDT report shall also be submitted to the EPA.~~

~~8~~7. As of the date of the submission of the demonstration test report, the Respondents shall comply with all operating requirements of the CDT ~~demonstration NOC~~ report~~and the requirements of 40 C.F.R. §§ 63.1209 AND 63.1219~~.

~~9~~8. The failure to timely submit a~~n~~ ~~NOC~~ CDT report to ~~TCEQ and~~ EPA within ninety (90) days from completion of the CD~~P~~T and the CMS performance test shall result in the

Formatted: Not Highlight

termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

F. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, during that mode of operation under §261.6(a)(3)(iv)(C), feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from petroleum refining, production and transportation practices. Oil-bearing hazardous waste from petroleum refining, production or transportation practices includes listed waste from specific petroleum refining sources (~~F037, F038, K048,~~ K049, K050, K051, K052, K169 and~~,~~ K170~~, K171 AND K172~~). Also acceptable are materials generated from processes meeting the definition established for ~~facilities whose primary~~ Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) ~~are~~ as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products

4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

Nothing in this Section III.F shall be construed to preclude Respondents from seeking authorization to process oil-bearing materials outside the scope of §261.6(a)(3)(iv)(C).

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to ~~obtain a certification from the generator that the hazardous waste in question is oil-bearing hazardous waste from petroleum refining, production and transportation practices and~~ make a ~~separate, independent~~ determination ~~based on information provided by the generator as to~~ whether the hazardous waste in question is "oil-bearing,"~~,~~ and that the hazardous waste actually came from petroleum refining, production, or transportation practices ~~at the generator's facility~~. The Respondents shall request that this provision be placed in the issued ~~its Final~~ RCRA permit.

G. Submission, Revision, and Approval Process

1. For all applications or plans required be submitted to TCEQ and/or EPA approval under this CAFO, TCEQ/EPA will review these applications or plans ~~and issue only one Notice of Deficiency (NOD) to the Respondents~~ in accordance with 30 T.A.C. §§ 281.3(c) and 281.19(a). The Respondents must ~~provide an approvable~~ respons~~ed~~ to any Notice of Deficiency

(NOD) ~~TCEQ and EPA~~ within the ~~thirty (30) days of receipt of~~ time period specified ~~by TCEQ~~ in the NOD unless extended~~deemed by the TCEQ~~. In the event that the Respondents fail to submit a timely and complete~~good-faith~~ ~~approvable~~ NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline unless that deadline has been extended pursuant to Section V.F (Force Majeure).~~[thirty (30) days from the date of receipt of the NOD].~~

H. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, ~~270.19,~~ 270.23, and 270.30 – 270.33), and which incorporates ~~the applicable~~ appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and 40 C.F.R. Part 63, Subpart~~s A and~~ EEE.

2. The Respondents may seek relief under the provisions of Section IV.F of this~~e~~ CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

I. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925(c)(3), 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable and appropriate requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subpart~~s A and~~ EEE directly into the permit or establish other permit conditions that are based on those parts; or take

action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R.

§ 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.E of this CAFO.

J. Submissions

In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify under penalty of law to the best of my knowledge and belief that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

69-71. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby

ORDERED that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

70.72. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

~~74.~~73. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

~~73.~~74. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the

effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

~~73.~~75. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

~~74.~~76. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it. To the extent that this CAFO imposes obligations that are to be fulfilled specifically by one of the Respondents (including without limitation civil penalties imposed specifically against one Respondent or specific compliance actions that this CAFO indicates are to be taken specifically by one Respondent), only such Respondent shall be liable

for the failure to fulfill such obligations. The other Respondent shall be required to use commercially reasonable efforts to mitigate and limit the effects of such failure.

C. ADDITIONAL REQUIREMENTS

~~75.~~77. The Respondents shall undertake the following additional requirements:

~~A. The Respondents agree that the oil reclamation unit and the TDU are subject to the requirements of 40 C.F.R. Part 61, Subparts V and FF.~~

~~B~~A. ~~Within thirty (30) days of the effective date of the CAFO, the Respondents shall identify the following equipment in the oil reclamation unit and the TDU that is in "volatile hazardous air pollutant" (VHAP) service, as that term is defined by 40 C.F.R. § 61.241:~~

~~1. pumps;~~

~~2. compressors;~~

~~3. pressure relief devices;~~

~~4. sampling connection systems;~~

~~5. open-ended valves or lines;~~

~~6. valves;~~

~~7. connectors;~~

~~8. surge control vessels;~~

~~9. bottoms receivers; and~~

~~10. control devices and systems.~~

~~The Respondents shall assume all~~that the ~~above-described~~ equipment ~~is in VHAP service unless otherwise demonstrated in accordance with the requirements of~~ § ~~261.245(d).~~

~~C. Within ninety (90)~~ 180 ~~days of the effective date of the CAFO, the Respondents shall implement a fugitive monitoring program in accordance with the requirements of 40 C.F.R.~~

~~Part 61, Subpart V.~~

~~D. Within ninety (90) 180 days of the effective date of the CAFO, the Respondent shall submit the notice required by 40 C.F.R. § 61.247(a) to TCEQ.~~

~~E~~A. Pursuant to 40 C.F.R. § 61.343(a)(1), within ~~ninety (90)~~180 days of the effective date of the CAFO, the Respondents shall install, operate, and maintain a fixed roof and closed-vent system that routes all organic vapors from the following tanks set forth below to a control device: 1. Shaker Tank (T-30);

2. Surge Tank (T-34);
3. Condensate Water Tanks (T-3A, T3-B);
4. T-10 Series Tanks (T-10, T-11, T-12, T-13);
5. T-30 Series Tanks (T-31, T-32, T-33);
6. Filtrate Mix Tank (T-5);
7. Filtrate Tank (T-6);
8. Filtrate Skim Tank (T-6A); and
9. ~~Waste Water Tanks (M3, M6, S1,S2); and~~

~~10.~~ Centrifuge.

The fixed-roofs shall meet the requirements of 40 C.F.R. § 61.343(a)(1)(i), and the control devices shall be designed and operated in accordance with the requirements of 40 C.F.R. § 61.349. The emissions from the tanks shall be routed to a carbon adsorption system when the TOU is not operating or out of service. The carbon in the carbon adsorption systems used as control device shall be replaced immediately when carbon breakthrough is indicated. The devices shall be monitored ~~on a daily basis when emissions are routed to the device,~~ as required by 40 C.F.R. § 61.354(d).

~~F~~B. Pursuant to 40 C.F.R. § 61.354(c), within ~~ninety (90)~~ 180 days of the effective date of this CAFO, the Respondents shall install, calibrate, maintain, and operate according to manufacturer's specifications, devices to continuously monitor the control devices operations required by 40 C.F.R. § 61.349.

~~G~~C. Pursuant to 40 C.F.R. § 61.345(a), within ~~ninety (90)~~180 days of the effective date of the CAFO, the Respondents shall install, operate and maintain covers on Bins 1, 2, 3, 4, and the Centrifuge solid bins that meet the requirements of 40 C.F.R. § 61.345(a)(1). The cover and openings shall be closed and secured at all time except for waste loading, removal, inspection or sampling, as required by 40 C.F.R. § 61.345(a)(1)(ii).

~~H~~D. The Respondents shall use a submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

~~I~~E. ~~Within ninety (90)~~ 180 ~~days of the effective date of the CAFO, the Respondents shall conduct performance tests for the TOU and the carbon adsorption system to demonstrate compliance with the requirements of 40 C.F.R. § 61.349. The performance tests shall be conducted in accordance with the requirements of 40 C.F.R. § 61.355.~~

~~J~~F~~E~~. Within six (6) months of the effective date of the CAFO, the Respondents shall submit a written report to EPA. The Report shall include ~~the following:~~

~~1. A copy of the equipment list required by Paragraph 75.B;~~

~~2. A copy of the fugitive emission program required by Paragraph 75.C;~~

~~3. A copy of the notice required by Paragraph 75.D;~~

~~4. D~~documentation showing compliance with Paragraphs 75.~~E~~A, 75.~~F~~B, 75.~~G~~C, and 75.~~H~~D. This includes documentation that the control devices meet the requirements set forth in 40 C.F.R. § 61.349(a)(2).~~; and~~

~~52. A copy of the performance tests required by Paragraph 75.EI.~~

~~K~~F. The report must be accompanied by the following certification:

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

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

~~L~~G. The Report shall be sent to the following:

Craig Lutz
Toxics Enforcement Section (6EN-AT)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

D. STIPULATED PENALTIES

~~76.~~78. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 6~~8~~9.A.3, 6~~8~~9.A.6, 6~~8~~9.A.8, 6~~8~~9.A.9, 6~~8~~9.C.1, 6~~8~~9.C.5, 6~~8~~9.D.1, and 6~~8~~9.E.2

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Certain Interim Operating Requirements – Paragraphs 6~~8~~9.A.4, 6~~8~~9.A.5, and 6~~8~~9.A.7

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500

31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

d. Failure to Comply with Additional Requirements – Section IV.C

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

~~77.~~79. For the violations described in Paragraph IV.D.a.-d., "Noncompliance" shall not be deemed to have commenced, and the associated penalties shall not begin to accrue, unless such noncompliance remains uncured following seven (7) days written notice from EPA. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 70 herein. Interest and late charges shall be paid as stated in Paragraphs 72 - 73 herein.

~~79. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.~~

E. DISPUTE RESOLUTION

~~78.~~80. If the Respondents object to any decision or directive of EPA in regard to Section III or IV.C, the Respondents shall notify each other and the following persons in writing of its objections, and the basis for those objections, within ~~fifteen (15)~~ 30 calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

~~79.~~81. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional ~~fifteen (15)~~ 30 calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

~~80.~~82. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second ~~15~~30-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach

agreement within this second ~~15~~30-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

83. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

Formatted: Bullets and Numbering

~~81.~~84. Any period of noncompliance and associated monetary penalties, shall be tolled during the period of any dispute resolution under this section IV.E., provided that such period shall not be tolled if the Associate Director or the Division Director, as applicable, determines in his or her reasonable discretion that the Respondents' objection was trivial or frivolous.

F. FORCE MAJEURE

~~82.~~85. A "force majeure event" is any event beyond the control of ~~the~~ either Respondent~~s~~, ~~their~~ its contractors, or any entity controlled by ~~the~~ a Respondent~~s~~ that delays the performance of any obligation under this CAFO despite ~~Defendant's~~ the Respondent's ~~best~~ commercially reasonable efforts to fulfill the obligation. "Commercially Reasonable~~Best~~ efforts" includes anticipating any ~~potential~~ reasonably foreseeable force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include ~~the~~ a Respondent's~~'~~ financial inability to perform any obligation under this CAFO.

86. The Respondent~~s~~ shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondent's~~'~~ first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondent~~s~~ shall also provide written notice, as provided in Section IV.F of

Formatted: Bullets and Numbering

this CAFO, within seven days of the time the Respondent~~s~~ first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the ~~Respondent's'~~ past and proposed actions of the Respondent(s) to prevent or minimize any delay; a schedule for carrying out those actions; and the ~~Respondents'~~ rationale of the Respondent(s)for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondent(s) from asserting any claim of force majeure.

~~83.~~87. The Respondent also shall provide notice orally or by electronic or facsimile transmission to the other Respondent not later than 24 hours after the time Respondent first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event, provided that the failure to give such notice shall not limit either Respondent's responsibilities under this CAFO.

~~84.~~88. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondent(s) to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.G of this CAFO.

~~85.~~89. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondent(s), the Complainant's position shall be binding, unless the Respondent(s) invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondent(s) bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the

Respondent(s) gave the notice required by the paragraph above, that the force majeure event caused any delay ~~the Respondents'~~ claimed by the Respondent(s) ~~was~~ to be attributable to that event; and that the Respondent(s) exercised their reasonable best efforts to prevent or minimize any delay caused by the event. If the Respondent(s) carry this burden, the delay at issue shall be deemed not to be a violation of the affected obligation of this CAFO.

G. NOTIFICATION

~~86~~ 90. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P.~~:~~

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000

Austin, TX 78701

Texas Commission on Environmental Quality

Section Manager
Industrial and Hazardous Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

H. MODIFICATION

~~87.~~91. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

I. ~~RETENTION OF ENFORCEMENT RIGHTS~~EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

~~88.~~92. This CAFO resolves the claims of the United States for the violations alleged in this CAFO and for any other alleged violation or area of concern under RCRA identified by EPA resulting from the June 8-11, 2010, June 14-17, 2010 and August 9-11, 2010 inspection and resulting investigation and any claims for injunctive relief relating to alleged violations of 40 C.F.R. Part 61, Subpart FF. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

~~89.~~93. Except as herein provided, ~~N~~nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health,

welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. ~~Furthermore, nothing in this CAFO shall be construed~~ or to prevent or limit EPA's ~~civil and criminal~~ authoritiesy, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

~~90.~~94. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. Except as herein provided, ~~T~~this CAFO shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

~~91.~~95. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents 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 Complainant or 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 ~~Section~~Paragraph 1.92 of this CAFO.

~~92.~~96. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The

Complainant, does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

J. INDEMNIFICATION OF EPA

~~93.~~97. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

K. COSTS

~~94.~~98. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondents specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

L. TERMINATION

~~95.~~99. At such time as the Respondents believe they have completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

M. EFFECTIVE DATE

~~96.100~~ This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____
TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. ~~This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.~~ This Final Order shall resolve only those ~~causes of action alleged herein~~claims identified in Section I.89 of the foregoing Consent Agreement. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law.. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copies of the CAFO were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

CONFIDENTIAL SETTLEMENT COMMUNICATION

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents deny any liability to the United States arising out of the transaction or occurrences alleged in this CAFO. Respondents also deny the truth of any allegations in this CAFO except the allegations pertaining to venue and subject matter jurisdiction in Section II.A. of this CAFO.~~admits the jurisdictional allegations herein; however, the Respondents neither admits nor denies the specific factual allegations contained in this CAFO.~~

4. The Respondents explicitly waives any right to contest the allegations and their right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are either specifically set forth herein, or are alleged violations of 40 C.F.R. Part 61; Subpart FF, for which injunctive relief is specified in Section IV.C of this CAFO.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization,

government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

~~10.~~The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. ~~11.~~10. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

Formatted: Bullets and Numbering

~~11.~~The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. ~~13.~~11. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

Formatted: Bullets and Numbering

~~14.~~12. "Owner" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

~~15.~~13. "Operator" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

~~16.~~14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

~~17.~~15. "Facility" is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

~~18.~~16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA I.D. No. TSD069452340, Permit No. HW-50052-001.

~~19.~~17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

~~20.~~18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

~~21.~~19. ~~The Respondent USET has a~~An oil reclamation unit is located ~~on~~at the facility identified in Paragraph 16.

~~22.~~20. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30) three mix tanks (T-31, T-32, and T-33), a centrifuge, and a surge tank (T-34) at the oil reclamation unit.

~~23.~~21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

~~24.~~22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. ALLEGED VIOLATIONS

Count One – Processing Hazardous Waste Without a Permit or Interim Status

~~25.~~23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment),[1] storage, or disposal of hazardous waste.

~~26.~~24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

ED_002427B_00006829-00004

Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~27.~~25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

~~28.~~26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as *that* term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

Formatted: Bullets and Numbering

28. Recyclable materials identified in 30 T.A.C. § 335.24(c) [40 C.F.R. §261.6(a)(3)] are not subject to regulation under Subchapters B-I or O of Chapter 335, 30 T.A.C. Chapters 1, 3, 10, 17, 20, 31, 39, 40, 50, 70, 80, 86, 261 or 305, except as provided in 30 T.A.C. § 335.24(g) and (h) [40 C.F.R. Parts 262 through 268, 270 or 124].

29. The Respondent USET notified the Texas Commission on Environmental Quality (TCEQ) ~~of this activity~~that it reclaims oil from oil-bearing hazardous wastes from petroleum refining, production and transportation practices in accordance with 40 C.F.R. § 261.6(a)(3)(iv)(C).

~~30.~~EPA has not promulgated a definition of "oil bearing hazardous wastes from petroleum refining, production and transportation practices" in its regulations.

30. ~~Hazardous wastes~~ Recyclable materials destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

31. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the

> treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

32. On various dates ~~between~~ after June 15, 2008, ~~and the present,~~ certain recyclable materials ~~hazardous wastes~~ were processed in the tanks identified in Paragraph 20.

33. Some of ~~T~~the ~~hazardous waste identified~~ recyclable materials referred to in Paragraph 30 did not meet the exemption ~~definition of "recyclable materials" as that term is defined in 430 T.A.C. § 335.24(a)~~ [in 40 C.F.R. § 261.6(a)(3~~1~~)(iv)(C)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices." ~~EPA has not promulgated a defininitiondefinition of "oil bearing hazardous wastes from petroleum refining, production and transportation practices in its regulations. Recyclable materials identified in 30 T.A.C. § 335.24(c) [40 C.F.R. §261.6(a)(3)] are not subject to regulation under Subchapters B-I or O of Chapter 335, 30 T.A.C. Chapters 1, 3, 10, 17, 20, 31, 39, 40, 50, 70, 80, 86, 261 or 305, except as provided in 30 T.A.C. § 335.24(g) and (h) [parts 262 through 268, 270 or 124].~~

~~34. The exemption for recyclable materials in 30 T.A.C. §335.24(c) [40 C.F.R.~~

~~§ 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraphs 30 – 31.~~ Respondent USET ceased the receipt of the hazardous waste identified in Paragraphs ~~30-33~~1.

~~35.~~34. The Respondents TD*X "processed" (treated) hazardous waste as that term is defined in 30 T.A.C. § 335.1(117) (40 C.F.R. § 260.10) in the tanks identified in Paragraph 20.

~~36.~~35. To date, neither the Respondent USET or Respondent TD*X ha~~ve~~s applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste in the tanks identified in Paragraph 20.

~~37.~~36. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by processing (treating) hazardous waste without a permit~~.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

~~38.~~37. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~39.~~38. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~40.39.~~ "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

~~41.40.~~ The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

41. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]. ~~The Respondent USET notified the TCEQ of this activity.~~

Formatted: Bullets and Numbering

42. Recyclable materials identified in 30 T.A.C. § 335.24(c) [40 C.F.R. §261.6(a)(3)] are not subject to regulation under Subchapters B-I or O of Chapter 335, 30 T.A.C. Chapters 1, 3, 10, 17, 20, 31, 39, 40, 50, 70, 80, 86, 261 or 305, except as provided in 30 T.A.C. § 335.24(g) and (h) [parts 262 through 268, 270 or 124].

43. The Respondent USET notified the ~~Texas Commission on Environmental Quality (TCEQ)~~ that it reclaims oil from oil-bearing hazardous wastes from petroleum refining, production and transportation practices in accordance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

~~42.44.~~ EPA has not promulgated a definition of "oil bearing hazardous wastes from petroleum refining, production and transportation practices" in its regulations.

~~43.45.~~ Recyclable materials ~~Hazardous wastes~~ destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

46. On various dates ~~between~~ after June 15, 2008 ~~and the present~~, certain ~~hazardous wastes~~Recyclable Materials were fed into the TDU that did not meet the exemption in 40 C.F.R. § 261.6(a)(3)(iv)(C) ~~definition of "recyclable materials" as that term is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)]~~ because the hazardous wastes were not "oil-bearing

Formatted: Bullets and Numbering

hazardous wastes from petroleum refining, production, and transportation practices."

Respondent USET ceased the receipt of these hazardous wastes.

~~47.The exemption for recyclable materials in 30 T.A.C. §335.24(c) [40 C.F.R. 47.§ 261.6(a)(3)] is not applicable for to the hazardous waste identified in Paragraph 42.~~

~~45.~~47. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

~~46.~~48. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

~~47.~~49. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants ~~and to remove them~~ from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents~~,~~ ~~and transfers them~~ to a gas treatment

system~~ using a nitrogen carrier gas~~. The oil is ~~then~~ recovered by condensing ~~it~~ vapor phase organic constituents in the gas treatment system. The noncondensable gases are recirculated to the heated rotary dryer. ~~The~~ An approximate 100 cfm vent stream of noncondensable gases is extracted to balance pressures within the system, filtered and injected into the combustion chamber of the TDU. ~~filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, and burned~~

~~48.~~50. The separation of the organic contaminants from the hazardous waste in the TDU's indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

~~49.~~51. To date, neither the Respondent USET nor Respondent TD*X has~~ve~~ applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

~~50.~~52. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by thermally processing (thermally treating) hazardous waste without a permit~~.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

~~51.~~53. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~52.~~54. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal

Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~53.~~55. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

~~54.~~56. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

~~54. The burning of gases in the TDU's combustion chamber constitutes thermal processing (thermal treatment), as term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].~~

~~55.~~57. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as

"any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

~~56.~~58. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion to indirectly heat a rotary dryer.

~~57.~~59. The TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

~~58.~~60. The TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] because it ~~thermally processes (thermally treats) hazardous waste by burning hazardous waste using controlled flame combustion~~meets the criteria established in Paragraphs II.B.57 and 58.

[EPA NEEDS TO LAY OUT ITS ARGUMENT THAT WE ARE BURNING HAZARDOUS WASTE TO GET TO PARAGRAPH 60].

~~59.~~61. To date, neither the Respondent USET nor Respondent TD*X has~~ve~~ applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

~~60.~~62. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by thermally processing (thermally treating) hazardous waste in an unpermitted incinerator.~~ The Respondent USET and the Respondent TD*X have proposed to reconfigure the TDU so that the vent stream of noncondensable gases is

routed to a thermal oxidizer unit (TOU) instead of the external combustion chamber of the TDU rotary dryer.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

~~61.~~63. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~62.~~64. Between on or about March 9, 2010, and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

~~63.~~65. The roll-off boxes identified in Paragraph 6~~2~~3 contained material which ~~was destined for the TDU~~had entered the oil reclamation process and was~~ere~~ being temporarily staged ~~to~~ before undergoing subsequent stages of the reclamation process. The Respondent USET discontinued the use of the area called the "Y" for this purpose.

~~64.~~66. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~65.~~67. The roll-off boxes identified in Paragraph 6~~2~~3 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

~~66.~~68. ~~To date, t~~The Respondent USET has~~d~~ not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y" between on or about March 9, 2010, and June 11, 2010.

~~67.~~69. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA,

42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by storing hazardous waste without a RCRA permit or interim status~~.

III. COMPLIANCE ORDER

~~68.~~70. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

1. As of the effective date of this CAFO, feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from petroleum refining, production and ~~transporation~~transportation practices. Oil-bearing hazardous waste from petroleum refining, production or transportation practices includes listed waste from specific Petroleum Refining Sources (~~F037, F038, K048,~~ K049, K050, K051, K052, K169, and K170~~, K171, AND K172~~). Also acceptable are materials generated from processes meeting the definition established for ~~facilities whose primary~~ Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) ~~are~~ as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site	213112	Support Activities for Oil and Gas Operations

	preparation and related construction activities performed on a contract or fee basis)		
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the processes meeting the definition of aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to ~~obtain a certification from the generator that the hazardous waste in question is oil-bearing hazardous waste from petroleum refining, production and transportation practices and~~ make a ~~separate, independent~~ determination ~~based on information provided by the generator as to~~ whether the hazardous waste in question is "oil-bearing," and that the hazardous waste actually came from petroleum refining, production, or transportation practices ~~at the generator's facility~~.

3. ~~Within seven (7) 14 days of~~ Beginning on the effective date of this CAFO, the Respondents shall ~~submit to EPA and TCEQ for approval~~operate the TDU with~~,~~ the following interim limits on operating parameters~~, including, but not limited, to the following~~:

a. the maximum hazardous waste feed rate to the rotary dryer shall be 310 tons per day;

b. ~~limits on ash, semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic) (Cl_2 and HCl);~~ dryer feed material shall be limited as follows:

1. ~~to a~~ maximum organic halogen content of~~at~~ 4000 ppm,
2. maximum mercury concentration ~~in~~ of 260 ppm in feed to TDU,
3. no limit on Semi-Volatile Metals concentration in feed to TDU,
4. no limit on Low-Volatile Metals concentration in feed to TDU,
5. no limit on ash content of feed to TDU.

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 1" + Tab after: 1.25" + Indent at: 1.25"

Formatted: Bullets and Numbering

;

c. a minimum solids discharge temperature of 650°F from the rotary dryer or that treated product desorber solids must be considered to be untreated, be separately collected, and be reprocessed through the rotary dryers, except for the first two hours after start-up of feed when the product material does not contact the product thermocouple ~~temperature~~;

d. -maximum internal pressure in the rotary dryer of 0.00 inches (W.C.) with a 60-second time delay while~~en~~ the dryer feed is on; ~~gas/vapor flow rate to the Off-Gas Condensing Recovery System;~~

e. maximum Off-Gas Condensing Recovery System outlet temperature of 130°F with a 5-minute delay when the dryer feed is on;

f. minimum combustion chamber temperature of 1400°F with a 5-minute delay in the rotary dryer external furnace while the dryer feed is on; ~~and~~

g. maximum gas/vapor flow rate to the combustion chamber of 180 scfm on an hourly rolling average basis with a continuous supply of air to the process vent injectors including 20%

or more excess air required to completely combust the process vent gas while the dryer feed is on; and~~.~~

h. a HEPA filter shall be in service at all times on the TDU process vent stream while the dryer feed is on,

~~h. other Off-Gas Condensing Recovery Systems operating parameter limits; and~~

~~i. any other operating parameter limits for air pollution control devices used.~~

~~The submittal shall include monitoring and recordkeeping requirements.~~ The Respondents shall perform ~~implement the~~ monitoring and maintain records relating to these operating parameter limits, ~~as approved or modified by EPA and TCEQ.~~

4. Within ninety ~~180 (180)~~ 90 days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU that immediately and automatically cuts off the hazardous waste feed when any of the following conditions occurs: ~~in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).~~

a. ~~O~~oxygen content in the process vent greater than 7% with 1-minute delay;

b. internal pressure in the dryer feed breach greater than 0.0 inches W.C. with 1-minute delay;

c. temperature at the outlet of the gas treatment system condensers greater than 130°F with 5-minute delay;

d. temperature in the combustion zone of the dryer's external furnace less than 1,400°F with a 5-minute delay;

e. loss of operation of the gas treatment system carrier gas recirculation blower; ~~and~~

f. valve position of the process vent injection verified as directing the process vent away from the dryer's external furnace combustion zone with a 1-minute delay;

g. feed rate to the TDU exceeding 310 ton/day based on a twentyfour-hour rolling average; and

h. process vent flow rate exceeding 180 scfm based on a one-hour rolling average.

5. Within 120 days after the effective date of this CAFO, Respondents shall submit to the TCEQ an application for the construction and operation of the thermal oxidizer under Texas Health and Safety Code Chapter 382. Within ninety 180 (180) daysone year of the effective date of this CAFO, or within ninety (90) days after issuance of the permit required for installation of the reconfigured TDU under Tex. Health and Safety Code Chapter 382, whichever is later, the Respondents shall reconfigure the TDU so that the non-condensable vent gases and the tank vent closed-vent system gases are routed to a thermal oxidizer unit (TOU) instead of the external combustion chamber of the TDU rotary dryer. After the reconfiguration has occurred, for the purposes of Section III and IV.C of this CAFO only, references to the TDU shall include the TOU, unless otherwise indicated.

6. Within ninety 180 (180) days ofBeginning on the effective date of this CAFOinitial operation of the TOU, the Respondents shall comply with also submit to EPA and TCEQ for approval, the following interim operating parameters for the TOU including, but not limited to:

a. minimum operating temperature of 1,400°F in the TOU combustion chamber when the feed to the dryer is on; and

b. maximum flue gas flow rate based on a residence time of 0.5 seconds at 1400°F, as determined by engineering calculations at the measured process flow rate when the feed to the dryer is on; and.

c. maximum process vent gas/vapor flow rate to the TOU combustion chamber of 250 scfm, based on the design capacity of the TOU, with a continuous supply of air including 20% or more excess air required to completely combust the process vent gas while the dryer feed is on.

~~The Respondents shall implement the operating parameter limits as approved or modified by EPA and TCEQ.~~

7. Within thirty (30)~~ninety 180 (180)~~ days of the effective date of this CAFO, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 264.1033(pf) applicable to process heaters~~63.1209(a)~~. Within sixty (60) days of the initial operation of the reconfigured TDU, ~~T~~the Respondents shall also install, calibrate and operate temporary continuous monitors to verify that ~~use~~ carbon monoxide ~~and~~ or hydrocarbon ~~CEMS to demonstrate and monitor~~ is in compliance with the following carbon monoxide ~~and~~or hydrocarbon standards: (i) carbon monoxide less than 100 ppm by volume, or (ii) hydrocarbons less than 10 ppm by volume as propane, both over an hourly rolling average, dry basis corrected to 7 percent oxygen ~~of 40 C.F.R. Part 63, Subpart EEE§63.1203(a)(5), provided that any compliance demonstration required by that subsection shall be conducted pursuant to the performance test specified in Section III.D. of this CAFO.~~ The Respondents shall also use oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen. The~~se~~ CEMS shall be located in compliance with 40 C.F.R. Part 60, Appendix B requirements ~~for rotary dryer emission point (EP-1),~~ for the

combustion chamber emission point (EP2)~~, and~~~~following~~ for the TOU. The Respondents shall operate the TDU and the TOU in a manner that the ~~one minute and~~ hourly rolling averages are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(a)(6). After the compliance demonstration test required by Section III.D of this CAFO ~~thirty (30) days of operation of temporary CEMS~~, the Respondents are allowed to remove ~~those~~the temporary CEMS instruments provided that both the data from the compliance demonstration test confirm compliance with the CO or hydrocarbon standards of 40 C.F.R. §63.1203(a)(5), and the CEMS required by §264.1033(f) actuates the AWFCO. The Respondents shall submit a written demonstration as to these findings to the ~~TCEQ~~EPA in the compliance demonstration test report .

~~8. Within one hundred twenty270 (120270) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ for approval, a feedstream analysis plan prepared in accordance with 40 C.F.R. § 63.1209(c)(2). The Respondents shall implement the plan as approved or modified by EPA and TCEQ.~~

8~~9~~. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA, ~~with a copy to TCEQ~~, which contains ~~. The Report shall include~~ the following:

a. Identification of~~y~~ the customer, the customer's SIC and NAICS code, copies ~~of the relevant~~ waste approval documents, ~~including the generator's certification that the oil-bearing hazardous waste is from petroleum refining, production and transportation practices,~~ and manifests for the previous six month period.

[NEED TO DISCUSS DETAILS AND FORMAT OF INFORMATION NEEDED BY EPA]

~~b. All time periods in where there were exceedances of the one minute and hourly rolling averages required under Paragraph 68.A.7.~~

be. ~~The initial Report shall include d~~Documentation ~~showing the~~ of installation ~~dates~~ of the equipment required by Paragraphs 6~~9~~8.A.4, A5, and A.7.

The Report may be submitted in an electronic format (i.e., compact disk). The Respondents may claim the report as confidential business information, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within ~~ninety (90) days~~ one year of the effective date of this CAFO, the Respondents shall submit to TCEQ ~~and EPA~~, an application for a Class 3 RCRA Permit Modification to permit the TDU as a miscellaneous unit under 40 C.F.R. Part 264, Subpart X in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, ~~270.19,~~ 270.23, and 270.30 – 270.33). ~~This permit application will serve as the Documentation of Compliance required by 40 C.F.R. § 63.1211(c).~~ A copy of this permit modification application shall also be submitted to EPA.

2. The permit application shall also include ~~relevant~~ requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU, the TOU, and the oil reclamation unit, ~~including~~relating to ~~an engineering report,~~ waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351), except that with regard to continuous monitoring required by §264.347(a)(1) and (2), only continuous monitoring of combustion temperature shall be required.

3. The Respondents shall also request that the ~~final~~ issued RCRA permit ~~also~~ include the following:

a. ~~The relevant~~ Appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and 40 C.F.R. Part 63, Subparts ~~A and~~ EEE;

b. ~~The f~~Feedstock limitations ~~set forth in Paragraph 68.F~~; and

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers~~; and~~.

~~d. Any risk-based terms and conditions necessary to protect human health and the environment.~~

4. The failure to timely submit a Class 3 Permit Modification to TCEQ ~~and EPA~~ within the deadline set forth in Paragraph 6~~9~~8.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

5. By no later than ~~two~~ three and one-half years (~~30~~42 months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and ~~have a final~~ obtain issuance from the TCEQ of a RCRA Subpart X permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33), and which incorporates ~~the applicable~~ appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and 40 C.F.R. Part 63, Subparts ~~A and~~ EEE. In the event that TCEQ does not issue a final RCRA Subpart X permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

~~**C. Public NoticePublic Notice of Intent to Comply (NIC)/Public Participation**~~

~~1. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b), and an initial notification pursuant to 40 C.F.R. § 63.9(b).~~

~~2. The Respondents shall make the draft NIC available to the public either (a) at least thirty (30) days prior to the public meeting pursuant to 40 C.F.R. § 63.1210(b)(2), or (b) at a time approved by EPA and TCEQ.~~

~~3~~1. ~~The Respondents shall provide the following notices to the public:~~

~~a. Notice of Receipt of Application and Intent to Obtain Permit pursuant to 30 T.A.C. §§ 39.418 and 39.509. Notice of the public meeting required by 30 T.A.C. § 305.69(d)(4) shall be included with the Notice of Receipt of Application and Intent to Obtain Permit, as required by 30 T.A.C. § 39.418~~; and

~~b. Notice to the public of the Notice of Application and Preliminary Decision pursuant to 30 T.A.C. §§ 39.419 and 39.509; and.~~

~~c. NIC public meeting required by 40 C.F.R. § 63.1210(c)(3).~~

~~4~~2. ~~The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d)(4) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) day comment period. This public meeting shall also be coordinated with the NIC public meeting required by 40 C.F.R. § 63.1210(c).~~

~~5. The Respondents shall submit to TCEQ and EPA the final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.~~

~~6. The failure to timely submit the final NIC to TCEQ and EPA no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.~~

C~~D~~. Startup, Shutdown, and Malfunction Plan

1. Prior to operation of the reconfigured TDU, ~~Within one hundred twenty (120)~~240 ~~days of the effective date of this CAFO,~~ the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and ~~63.1206(c)(2)~~include provisions to comply with AWFCOs as per Section 698.A.4 of this CAFO during Startup, Shutdown and Malfunctions. The Respondents shall implement the Startup, Shutdown and Malfunction Plan as approved by TCEQ~~EC comply with any instructions or directives from TCEQ regarding approval, disapproval, or submission of any additional information~~. A copy of the Startup, Shutdown, and Malfunction Plan shall also be submitted to EPA.

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

D~~E~~. ~~Comprehensive Performance~~ Compliance Demonstration Test (CD~~P~~T)

1. The Respondents shall perform a ~~comprehensive performance~~ compliance demonstration test (CD~~P~~T) as set forth below. The CD~~P~~T is required to demonstrate compliance with the appropriate emissions standards of 40 C.F.R. Part ~~63~~264, Subparts O and AA, and Part 63 Subpart EEE ~~EEE~~, establish limits for the operating parameters ~~provided by 40 C.F.R. § 61.1209, identified in the RCRA permit modification application required by Section III.B,~~ and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within one hundred twenty (90~~120~~) days of the effective date of this CAFO, the Respondents shall submit to ~~TCEQ and~~ EPA for approval a ~~complete and approvable~~

Formatted: Not Highlight

~~comprehensive performance test~~CP~~P~~DT plan and a continuous monitoring system (CMS) performance test plan pursuant to the appropriate requirements of 40 C.F.R. §~~§ 63.7, 63.1207, and 63.1209~~270.62(b)(2). The CD~~P~~T plan shall ~~also~~ provide for a performance test to determine the ~~efficiency and~~ operating parameters of the condensers from the Off-Gas Condensing Recovery System, the overall equivalent~~capture efficiency,~~ destruction and removal efficiency of the TDU system including the TOU~~, and the actual nature, pattern, and quantity of emissions from EPN EP-2, the TOU, and any other fugitive or point source emissions of the TDU system capable of routing off-gas from the TDU to the atmosphere, including its air contaminant control systems, product recovery systems, and treated material handling system.~~ Based on the principal operation of the TDU being the reclamation of oil-bearing hazardous waste from petroleum refining, production and transportation practices, the POHC for the DRE determination shall be the sum of all polynuclear aromatic hydrocarbon (PAH) compounds in the listings for K048-K052, K169-K172, F037 and F038, because PAH compounds have the highest difficulty of incineration of the organic constituents that are the basis for listing of these wastes.~~ Copies of the CDT plan and CMS test plan shall also be submitted to EPA.~~

~~3. The Respondents shall make the CPT plan and CMS performance test plan available for public review upon issuance of the notice of NIC public meeting.~~

~~4~~3. The Respondents shall implement the CD~~P~~T Plan and the CMS performance test plan as approved by ~~TCEQ and~~ EPA, within ninety (90) days after approval of the CD~~P~~T Plan and the CMS performance test plan, or within sixty (60) days after installation of the TOU, whichever is later. During the testing, the Respondents shall ~~comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).~~ assure that each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions

Formatted: Not Highlight

specified in the relevant standard. For the purpose of determining compliance with a relevant standard, the arithmetic mean of the results of the three runs shall apply. At~~s~~ a minimum during the CD~~P~~T, the Respondents shall demonstrate that the TDU and TOU achieve the following performance standards:

a. the equivalent "destruction and removal efficiency" (DRE) must be greater than 99.99% for ~~one~~the designated POHC fed to the TDU, as per 40 CFR 264, Subpart O, based on the mass feed rate of the POHC fed to the TDU and the mass emission rate of the same POHC present in the exhaust emissions from the combusted process vent, and the POHC shall be the total of the PAH compounds that are the basis for listing for waste codes K048-K052, K169-K172, F037 and F038;

b. the process vent must be controlled by combustion in a control device in accordance with RCRA emissions control standards for process vents as per 40 CFR Part 264, Subpart AA, by providing a minimum residence time of 0.50 seconds at a minimum temperature of 760°C;

c. the closed vent system emissions shall be controlled by combustion in a device that provides a minimum residence time of 0.5 seconds at a minimum temperature of 760°C (1,400°F), as per 40 CFR Part 61, Subpart FF; ~~and~~

d. d~~D~~ioxins and furans emissions shall be less than 0.240 ng TEQ/dscm corrected to 7 percent oxygen from the combusted process vent gas emission stream;

e. mercury emissions less than 8.1 µg/dscm corrected to 7% oxygen in the TOU stack;~~,~~

f. semi-volatile metals (Cd, Pb) emissions less than 10 µg/dscm corrected to 7% oxygen in the TOU stack;~~,~~

g. low-volatile metals (As, Be, Cr) emissions less than 23 µg/dscm combined emissions corrected to 7% oxygen in the TOU stack;~~,~~

h. carbon monoxide emissions less than 100 ppmV, or hydrocarbons emissions less than 10 ppmV as propane, over an hourly rolling average, dry basis, corrected to 7% oxygen in the TOU stack;~~,~~

i. hydrogen chloride and chlorine gas emissions less than 21 ppmV, combined emissions, expressed as chloride equivalent, dry basis, corrected to 7% oxygen in the TOU stack;~~,~~

j. particulate matter emissions less than 0.0016 gr/dscf corrected to 7% oxygen in the TOU stack;~~.~~and

k. during one run of the CDT, the organic compounds reduction efficiency for the TOU shall demonstrated to be greater than 95%, based on Method 18 organic concentration samples taken from the process vent, the tank vent closed vent system, and the TOU stack, and flow measurements made from these same points, using the equation as per 40 CFR § 61.355(i)(4).

4~~5~~. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations) that they have exceeded any emission standard for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except that the Respondents may burn hazardous waste for the purpose of conducting demonstration tests under revised operating conditions for the emission standard exceeded ~~except as provided in 40 C.F.R. § 63.1207(*l*)(1)~~. The Respondents must make this determination within ~~forty-five (45)~~ninety (90) days following completion of the C~~P~~DT. ~~The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).~~

~~6~~5. All analyses required by the CD~~P~~T plan shall be performed by a NELAC -accredited laboratory or by a laboratory pre-approved by TCEQ.

~~7~~6. ~~Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), w~~Within ninety (90) days from completion of the C~~P~~DT and the CMS performance test, the Respondents shall prepare and submit to ~~TCEQ and~~ EPA a ~~comprehensive test report~~ CDT report that includes results for the analysis of samples, determination of emissions, and raw data, as well as the results of any performance tests, opacity or visible emission observations, continuous monitoring system (CMS) performance evaluations, and/or other monitoring procedures or methods that were conducted. ~~Submit a Notification of Compliance (NOC) to TCEQ and EPA~~ The report shall document~~ing~~ compliance with the emission standards and continuous monitoring system requirements, and identify~~ing~~ the operating parameter limits ~~under 40 C.F.R. § 63.1209~~ for the minimum combustion chamber temperature. All data collected during the CD~~P~~T and the CMS performance test (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted as part of the CDT report~~to TCEQ and EPA along with the NOC test report. A copy of the CDT report shall also be submitted to the EPA.~~

~~8~~7. As of the date of the submission of the demonstration test report, the Respondents shall comply with all operating requirements of the CDT ~~demonstration NOC~~ report~~and the requirements of 40 C.F.R. §§ 63.1209 AND 63.1219~~.

~~9~~8. The failure to timely submit a~~n~~ ~~NOC~~ CDT report to ~~TCEQ and~~ EPA within ninety (90) days from completion of the CD~~P~~T and the CMS performance test shall result in the

Formatted: Not Highlight

termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

F. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, during that mode of operation under §261.6(a)(3)(iv)(C), feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from petroleum refining, production and transportation practices. Oil-bearing hazardous waste from petroleum refining, production or transportation practices includes listed waste from specific petroleum refining sources (~~F037, F038, K048,~~ K049, K050, K051, K052, K169 and~~,~~ K170~~, K171 AND K172~~). Also acceptable are materials generated from processes meeting the definition established for ~~facilities whose primary~~ Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) ~~are~~ as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products

4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

Nothing in this Section III.F shall be construed to preclude Respondents from seeking authorization to process oil-bearing materials outside the scope of §261.6(a)(3)(iv)(C).

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to ~~obtain a certification from the generator that the hazardous waste in question is oil-bearing hazardous waste from petroleum refining, production and transportation practices and~~ make a ~~separate, independent~~ determination ~~based on information provided by the generator as to~~ whether the hazardous waste in question is "oil-bearing,"~~,~~ and that the hazardous waste actually came from petroleum refining, production, or transportation practices ~~at the generator's facility~~. The Respondents shall request that this provision be placed in the issued ~~its Final~~ RCRA permit.

G. Submission, Revision, and Approval Process

1. For all applications or plans required be submitted to TCEQ and/or EPA approval under this CAFO, TCEQ/EPA will review these applications or plans ~~and issue only one Notice of Deficiency (NOD) to the Respondents~~ in accordance with 30 T.A.C. §§ 281.3(c) and 281.19(a). The Respondents must ~~provide an approvable~~ respons~~ed~~ to any Notice of Deficiency

(NOD) ~~TCEQ and EPA~~ within the ~~thirty (30) days of receipt of~~ time period specified ~~by TCEQ~~ in the NOD unless extended~~deemed by the TCEQ~~. In the event that the Respondents fail to submit a timely and complete~~good-faith~~ ~~approvable~~ NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline unless that deadline has been extended pursuant to Section V.F (Force Majeure).~~[thirty (30) days from the date of receipt of the NOD].~~

H. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, ~~270.19,~~ 270.23, and 270.30 – 270.33), and which incorporates ~~the applicable~~ appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and 40 C.F.R. Part 63, Subpart~~s A and~~ EEE.

2. The Respondents may seek relief under the provisions of Section IV.F of this~~e~~ CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

I. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925(c)(3), 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable and appropriate requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subpart~~s A and~~ EEE directly into the permit or establish other permit conditions that are based on those parts; or take

action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R.

§ 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.E of this CAFO.

J. Submissions

In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify under penalty of law to the best of my knowledge and belief that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

69-71. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby

ORDERED that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

70.72. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

~~74.~~73. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

~~73.~~74. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the

effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

~~73.~~75. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

~~74.~~76. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it. To the extent that this CAFO imposes obligations that are to be fulfilled specifically by one of the Respondents (including without limitation civil penalties imposed specifically against one Respondent or specific compliance actions that this CAFO indicates are to be taken specifically by one Respondent), only such Respondent shall be liable

for the failure to fulfill such obligations. The other Respondent shall be required to use commercially reasonable efforts to mitigate and limit the effects of such failure.

C. ADDITIONAL REQUIREMENTS

~~75.~~77. The Respondents shall undertake the following additional requirements:

~~A. The Respondents agree that the oil reclamation unit and the TDU are subject to the requirements of 40 C.F.R. Part 61, Subparts V and FF.~~

~~B~~A. ~~Within thirty (30) days of the effective date of the CAFO, the Respondents shall identify the following equipment in the oil reclamation unit and the TDU that is in "volatile hazardous air pollutant" (VHAP) service, as that term is defined by 40 C.F.R. § 61.241:~~

~~1. pumps;~~

~~2. compressors;~~

~~3. pressure relief devices;~~

~~4. sampling connection systems;~~

~~5. open-ended valves or lines;~~

~~6. valves;~~

~~7. connectors;~~

~~8. surge control vessels;~~

~~9. bottoms receivers; and~~

~~10. control devices and systems.~~

~~The Respondents shall assume all~~that the ~~above-described~~ equipment ~~is in VHAP service unless otherwise demonstrated in accordance with the requirements of § 261.245(d).~~

~~C. Within ninety (90)~~ 180 ~~days of the effective date of the CAFO, the Respondents shall implement a fugitive monitoring program in accordance with the requirements of 40 C.F.R.~~

~~Part 61, Subpart V.~~

~~D. Within ninety (90) 180 days of the effective date of the CAFO, the Respondent shall submit the notice required by 40 C.F.R. § 61.247(a) to TCEQ.~~

~~E~~A. Pursuant to 40 C.F.R. § 61.343(a)(1), within ~~ninety (90)~~180 days of the effective date of the CAFO, the Respondents shall install, operate, and maintain a fixed roof and closed-vent system that routes all organic vapors from the following tanks set forth below to a control device: 1. Shaker Tank (T-30);

2. Surge Tank (T-34);
3. Condensate Water Tanks (T-3A, T3-B);
4. T-10 Series Tanks (T-10, T-11, T-12, T-13);
5. T-30 Series Tanks (T-31, T-32, T-33);
6. Filtrate Mix Tank (T-5);
7. Filtrate Tank (T-6);
8. Filtrate Skim Tank (T-6A); and
9. ~~Waste Water Tanks (M3, M6, S1,S2); and~~

~~10.~~ Centrifuge.

The fixed-roofs shall meet the requirements of 40 C.F.R. § 61.343(a)(1)(i), and the control devices shall be designed and operated in accordance with the requirements of 40 C.F.R. § 61.349. The emissions from the tanks shall be routed to a carbon adsorption system when the TOU is not operating or out of service. The carbon in the carbon adsorption systems used as control device shall be replaced immediately when carbon breakthrough is indicated. The devices shall be monitored ~~on a daily basis when emissions are routed to the device,~~ as required by 40 C.F.R. § 61.354(d).

~~F~~B. Pursuant to 40 C.F.R. § 61.354(c), within ~~ninety (90)~~ 180 days of the effective date of this CAFO, the Respondents shall install, calibrate, maintain, and operate according to manufacturer's specifications, devices to continuously monitor the control devices operations required by 40 C.F.R. § 61.349.

~~G~~C. Pursuant to 40 C.F.R. § 61.345(a), within ~~ninety (90)~~180 days of the effective date of the CAFO, the Respondents shall install, operate and maintain covers on Bins 1, 2, 3, 4, and the Centrifuge solid bins that meet the requirements of 40 C.F.R. § 61.345(a)(1). The cover and openings shall be closed and secured at all time except for waste loading, removal, inspection or sampling, as required by 40 C.F.R. § 61.345(a)(1)(ii).

~~H~~D. The Respondents shall use a submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

~~I~~E. ~~Within ninety (90)~~ 180 ~~days of the effective date of the CAFO, the Respondents shall conduct performance tests for the TOU and the carbon adsorption system to demonstrate compliance with the requirements of 40 C.F.R. § 61.349. The performance tests shall be conducted in accordance with the requirements of 40 C.F.R. § 61.355.~~

~~J~~F~~E~~. Within six (6) months of the effective date of the CAFO, the Respondents shall submit a written report to EPA. The Report shall include ~~the following:~~

~~1. A copy of the equipment list required by Paragraph 75.B;~~

~~2. A copy of the fugitive emission program required by Paragraph 75.C;~~

~~3. A copy of the notice required by Paragraph 75.D;~~

~~4. D~~documentation showing compliance with Paragraphs 75.~~E~~A, 75.~~F~~B, 75.~~G~~C, and 75.~~H~~D. This includes documentation that the control devices meet the requirements set forth in 40 C.F.R. § 61.349(a)(2).~~; and~~

~~52. A copy of the performance tests required by Paragraph 75.EI.~~

~~K~~F. The report must be accompanied by the following certification:

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

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

~~L~~G. The Report shall be sent to the following:

Craig Lutz
Toxics Enforcement Section (6EN-AT)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

D. STIPULATED PENALTIES

~~76.~~78. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 6~~8~~9.A.3, 6~~8~~9.A.6, 6~~8~~9.A.8, 6~~8~~9.A.9, 6~~8~~9.C.1, 6~~8~~9.C.5, 6~~8~~9.D.1, and 6~~8~~9.E.2

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Certain Interim Operating Requirements – Paragraphs 6~~8~~9.A.4, 6~~8~~9.A.5, and 6~~8~~9.A.7

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500

31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

d. Failure to Comply with Additional Requirements – Section IV.C

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

~~77.~~79. For the violations described in Paragraph IV.D.a.-d., "Noncompliance" shall not be deemed to have commenced, and the associated penalties shall not begin to accrue, unless such noncompliance remains uncured following seven (7) days written notice from EPA. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 70 herein. Interest and late charges shall be paid as stated in Paragraphs 72 - 73 herein.

~~79. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.~~

E. DISPUTE RESOLUTION

~~78.~~80. If the Respondents object to any decision or directive of EPA in regard to Section III or IV.C, the Respondents shall notify each other and the following persons in writing of its objections, and the basis for those objections, within ~~fifteen (15)~~ 30 calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

~~79.~~81. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional ~~fifteen (15)~~ 30 calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

~~80.~~82. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second ~~15~~30-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach

agreement within this second ~~15~~30-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

83. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

Formatted: Bullets and Numbering

~~81.~~84. Any period of noncompliance and associated monetary penalties, shall be tolled during the period of any dispute resolution under this section IV.E., provided that such period shall not be tolled if the Associate Director or the Division Director, as applicable, determines in his or her reasonable discretion that the Respondents' objection was trivial or frivolous.

F. FORCE MAJEURE

~~82.~~85. A "force majeure event" is any event beyond the control of ~~the~~ either Respondent~~s~~, ~~their~~ its contractors, or any entity controlled by ~~the~~ a Respondent~~s~~ that delays the performance of any obligation under this CAFO despite ~~Defendant's~~ the Respondent's ~~best~~ commercially reasonable efforts to fulfill the obligation. "Commercially Reasonable~~Best~~ efforts" includes anticipating any ~~potential~~ reasonably foreseeable force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include ~~the~~ a Respondent's~~'~~ financial inability to perform any obligation under this CAFO.

86. The Respondent~~s~~ shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondent's~~'~~ first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondent~~s~~ shall also provide written notice, as provided in Section IV.F of

Formatted: Bullets and Numbering

this CAFO, within seven days of the time the Respondent~~s~~ first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the ~~Respondent's'~~ past and proposed actions of the Respondent(s) to prevent or minimize any delay; a schedule for carrying out those actions; and the ~~Respondents'~~ rationale of the Respondent(s)for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondent(s) from asserting any claim of force majeure.

~~83.~~87. The Respondent also shall provide notice orally or by electronic or facsimile transmission to the other Respondent not later than 24 hours after the time Respondent first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event, provided that the failure to give such notice shall not limit either Respondent's responsibilities under this CAFO.

~~84.~~88. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondent(s) to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.G of this CAFO.

~~85.~~89. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondent(s), the Complainant's position shall be binding, unless the Respondent(s) invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondent(s) bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the

Respondent(s) gave the notice required by the paragraph above, that the force majeure event caused any delay ~~the Respondents'~~ claimed by the Respondent(s) ~~was~~ to be attributable to that event; and that the Respondent(s) exercised their reasonable best efforts to prevent or minimize any delay caused by the event. If the Respondent(s) carry this burden, the delay at issue shall be deemed not to be a violation of the affected obligation of this CAFO.

G. NOTIFICATION

~~86~~ 90. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P.~~-~~:

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000

Austin, TX 78701

Texas Commission on Environmental Quality

Section Manager
Industrial and Hazardous Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

H. MODIFICATION

~~87.~~91. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

I. ~~RETENTION OF ENFORCEMENT RIGHTS~~EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

~~88.~~92. This CAFO resolves the claims of the United States for the violations alleged in this CAFO and for any other alleged violation or area of concern under RCRA identified by EPA resulting from the June 8-11, 2010, June 14-17, 2010 and August 9-11, 2010 inspection and resulting investigation and any claims for injunctive relief relating to alleged violations of 40 C.F.R. Part 61, Subpart FF. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

~~89.~~93. Except as herein provided, ~~N~~nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health,

welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. ~~Furthermore, nothing in this CAFO shall be construed~~ or to prevent or limit EPA's ~~civil and criminal~~ authoriti~~es~~y, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

~~90.~~94. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. Except as herein provided, ~~T~~this CAFO shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

~~91.~~95. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents 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 Complainant or 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 ~~Section~~Paragraph 1.92 of this CAFO.

~~92.~~96. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The

Complainant, does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

J. INDEMNIFICATION OF EPA

~~93.~~97. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

K. COSTS

~~94.~~98. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondents specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

L. TERMINATION

~~95.~~99. At such time as the Respondents believe they have completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

M. EFFECTIVE DATE

~~96.100~~ This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____
TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. ~~This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.~~ This Final Order shall resolve only those ~~causes of action alleged herein~~claims identified in Section I.89 of the foregoing Consent Agreement. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law.. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copies of the CAFO were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 2/14/2012 10:07:58 PM
To: Sheridan, MaryBeth [Sheridan.MaryBeth@epa.gov]
CC: Elliott, Ross [Elliott.Ross@epa.gov]; Alan Carpien [Carpien.AlanLNDU@usepa.onmicrosoft.com]; Vishnu Katari [Katari.VishnuLNDU@usepa.onmicrosoft.com]; Tidmore, Guy [tidmore.guy@epa.gov]; Ryan Rosser [Rosser.Ryan@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Lutz, Craig [lutz.craig@epa.gov]
Subject: Re: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)
Attachments: TDX Memo on Noncontainerized Gas.pdf; RCRA Technical Guidance Document for Process Vents (Selected Pages).pdf

We had a meeting to with U.S. Ecology and TD*X regarding the TDU and whether it is an incinerator. As expected, they pushed back on this issue. TD*X's attorney prepared a memo arguing that the material in question is an uncontainerized gas, and thus not a solid waste. I would appreciate your thoughts on his memo. I have also attached selected pages from a RCRA Technical Guidance Document which he cited in his memo. Please let me know your thoughts. Thanks.

TDX Memo on Noncontainerize... RCRA Technical Guidance Docum...

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

IMPORTANT/CONFIDENTIAL: The content of this e-mail is intended only for the use of the individual or entity to whom it is addressed. This message contains information from the U.S. Environmental Protection Agency which may be privileged, confidential, or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this message, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail, and delete this e-mail from your system.

From: MaryBeth Sheridan/DC/USEPA/US

To: Evan Pearson/R6/USEPA/US@EPA
Cc: Ross Elliott/DC/USEPA/US@EPA, Alan Carpien/DC/USEPA/US@EPA
Date: 01/31/2012 08:19 AM
Subject: Re: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

Evan, I can discuss this issue today if you have time and see if we need to do more research. My direct number is 703-308-4941. Mary Beth Sheridan

From: Alan Carpien/DC/USEPA/US

To: Ross Elliott/DC/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA
Cc: Evan Pearson/R6/USEPA/US@EPA
Date: 01/30/2012 11:57 AM
Subject: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

I meant to include Evan -- I apologize.
----- Forwarded by Alan Carpien/DC/USEPA/US on 01/30/2012 11:56 AM -----

From: Alan Carpien/DC/USEPA/US
To: Ross Elliott/DC/USEPA/US@EPA
Cc: MaryBeth Sheridan/DC/USEPA/US@EPA
Date: 01/30/2012 11:48 AM
Subject: Re: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

Could you guys get together with Evan? He has to deal with these folks fairly shortly. I think we need to make sure we won't be having problems with the NHSM rule.

From: Ross Elliott/DC/USEPA/US
To: MaryBeth Sheridan/DC/USEPA/US@EPA
Cc: Alan Carpien/DC/USEPA/US@EPA
Date: 01/24/2012 10:23 AM
Subject: Re: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

What is the timing on this? I am busy right now w/ CCR and other stuff...if these are the former Duratherm units (sold to US Ecology, I believe) they have operated under Subtitle C permits for years...now that U.S. Ecology operates them, they want to stop operating under C permits? Someone should let the state know, via the Region, if it is indeed the case that US Ecology is maneuvering to a new operating standard as an exempt recycler. Someone should confirm that.

Regarding the specific issue, I think we have established that if a thermal desorption unit is processing hazardous waste, and use an afterburner, odds are that this is a RCRA permitted activity. Even w/out getting in to the contained gas thing in detail, I think we have established that combusting emissions from hazardous waste management units is a RCRA-regulated activity. I also recall from many discussions w/ Bob Holloway and Charlotte Mooney and others that if you have a thermal desorption unit recovering organics from a hazardous waste, while that might qualify as an exempt-recycling unit, once you add an afterburner, that's a different kettle of fish. That's an incinerator.

From: MaryBeth Sheridan/DC/USEPA/US
To: Ross Elliott/DC/USEPA/US@EPA
Cc: Alan Carpien/DC/USEPA/US@EPA
Date: 01/24/2012 09:34 AM
Subject: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

I forwarded to you, Ross, since it is a petroleum exclusion they are referencing. Have you been involved at all? I will read it more carefully later today. Mary Beth
----- Forwarded by MaryBeth Sheridan/DC/USEPA/US on 01/24/2012 09:33 AM -----

From: Alan Carpien/DC/USEPA/US
To: Evan Pearson/R6/USEPA/US@EPA, Marilyn Goode/DC/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Tracy Atagi/DC/USEPA/US@EPA, George Faison/DC/USEPA/US@EPA, Marc Thomas/DC/USEPA/US@EPA
Cc: Craig Lutz/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Laurel Celeste/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Vishnu Katari/DC/USEPA/US@EPA
Date: 01/23/2012 09:51 PM
Subject: Re: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

In the Non-Hazardous Solid Material (NHSM) rule, we have been agonizing over the issue of what constitutes a "contained gas." It seems that people in ORCR, whom I have copied, should look at this.

From: Evan Pearson/R6/USEPA/US
To: Vishnu Katari/DC/USEPA/US@EPA, Alan Carpien/DC/USEPA/US@EPA, Laurel Celeste/DC/USEPA/US@EPA
Cc: Ryan Rosser/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA
Date: 01/23/2012 02:17 PM
Subject: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

I would like your opinion on whether a certain thermal desorption unit needs a RCRA permit. I got your names from the responsibility lists on the intranet (both OECA and OGC). If you are not the correct person to address this issue, could you please forward it to that person. A description of the process and the legal reasoning is set forth below.

A. Process Description

U.S. Ecology Texas (USET) conducts oil reclamation activities at its Robstown, TX facility. As part of this activity, USET operates an on-site thermal desorption unit to process the oil-bearing materials to reclaim the oil for sale. USET claims that they are recycling hazardous waste pursuant to 40 C.F.R. § 261.6(a)(3)(iv), and therefore are not subject to either 40 C.F.R. Part 264, Subpart O (Incinerators) or Subpart X (Miscellaneous Units).

U.S. Ecology has raised the defense that the vent gas stream that is sent to the combustion chamber is not a solid waste because it is a non-containerized gas [which is exempt from the definition of solid waste in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27)]. A copy of this letter is attached below. The following is a description of their process:

The facility receives waste from refineries and petrochemical facilities. The feed material is fed into a Thermal Desorption Unit (TDU). Heat is applied to the feed material in an indirect heated rotary dryer to separate the organic contaminants and to remove them from the feed material. Nitrogen carrier gas is circulated through the indirect heated dryer. Oil and water are removed from the feed material as it heats in the dryer and are transported to the gas system condensers with the carrier gas. The oil is then recovered by condensing it in a gas treatment system. USET claims that the condensers recover 95% of the VOC HAPs, and 99% of SVOC HAPs with the reclaimed oil product. A process vent is purged from the carrier gas in a closed vent system. According to a USET employee, the vent stream makes up one third of the BTU value need to fire the unit. The vent is to necessary to maintain a negative pressure within the unit and is balanced with a fresh nitrogen supply. This process vent stream is filtered before it is injected into the combustion chamber. The process vent stream includes nitrogen and non-condensable gases from the dryer. USET claims that these remaining uncondensed gases are in a gaseous state at less than 70° F. The process vent gases have a distinct odor. The odors are controlled by injection of the process vent gas into the combustion chamber. USET claims the routing the uncondensed gases back to the combustion chamber further

controls VOCs with an estimated removal efficiency of 99%.

B. Legal Analysis

Assume for the sake of this analysis, that USET is accepting only wastes from petroleum refineries, and otherwise meets the requirements of 40 C.F.R. § 261.6(a)(3)(iv). Does the fact that USET routes the uncondensed gases back into the combustion chamber/fire box subject the TDU to the incinerator requirements.

In RO 13657 (attached), EPA stated that "a thermal desorber would be subject to regulation as an incinerator if it was equipped with a fired afterburner to destroy desorbed organic compounds, or if the desorption chamber was directly fired, irrespective of how the desorbed organics were controlled. On the other hand, if the desorption chamber was indirectly heated, and the desorbed organics were not controlled using controlled flame combustion (e.g., no afterburner), the thermal unit would be subject to regulation as a 'miscellaneous unit'." Therefore, under this standard, the TDU would be considered an incinerator since it routes that uncondensed gases back into the combustion chamber.

USET cites 47 Fed. Reg. 27520, 27530 (June 24, 1982) (attached) which states that "fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general, the RCRA standards do not apply to fume incinerators since the input is not identifiable as a solid waste, according to the definition set forth in § 261.2." This position is repeated in a July 31, 1984 Memo (RO 12272), which USET also cited.

In RO 12272 (attached), the question was whether the hazardous determination of a waste is or is not suppose to be made at standard temperature and pressure, or whether this determination is to be made in the form (i.e., gas, solid, liquid) that it is generated. In this case, the facility in question had been condensing the gaseous emissions and feeding them along with other gaseous wastes into an incinerator. These gaseous emissions were previously condensed prior to treatment in a flume incinerator. However, the facility planned to feed uncondensed reactor vent gases directly to the fume incinerator. RO 12272 cited the June 24, 1982 Federal Register Notice in the memo. The memo also stated that it was reconsidering its position.

In 49 Fed. Reg. 5313, 5314 (February 10, 1984) (attached), EPA stated in the preamble to a proposed rule that "the exclusion from RCRA of "gaseous materials" that are not contained . . in the Agency's view, applies only to true gases, namely those which are not capable of being condensed and which remain gases at standard temperature and pressure. . . The Agency, of course, is not requiring that these light ends be condensed; however, as a RCRA hazardous waste, these light ends remain subject to the applicable regulations even if left in the gaseous state. Otherwise, one could evade regulation under RCRA simply by heating every waste to the gaseous state."

In 54 Fed. Reg. 50968, 50970 (December 11, 1989), (attached) EPA stated that "with the respect to the proposed listing of light ends [49 Fed. Reg. 5313 listed above], the Agency also included a discussion of its authority under RCRA to regulate uncondensed and uncontainerized gases, which are liquids at standard temperature and pressure. The notice did not propose that the light ends must be condensed; however under the proposal the light ends would have been subject to the applicable regulations, even when they remain in the gaseous state. Based on further analysis, the Agency now believes that our authority under RCRA is limited to the regulation of only containerized or condensed gases."

On the surface it appears that the process vent stream that is injected back into the combustion chamber would not be solid waste. However, Region 6 believes that this vent stream is a RCRA hazardous waste, and therefore the TDU should meet the incinerator standard of 40 C.F.R. Part 264, Subpart O. In this case, USET receives hazardous waste from other facilities, and then treats the hazardous waste in order to recover oil. The vent stream is produced as a result of the treatment of the hazardous waste. Thus, the derived from rule [40 C.F.R. § 261.3(c)(2)(i)] would result in the vent stream being a hazardous waste.

In addition, the references in the 1984 and 1989 relate to the question of whether certain "light ends" were hazardous waste, specifically uncondensed and containerized gases which are liquids at standard temperature and pressure. In other words, the question was whether the "light ends" or gaseous material were hazardous wastes at the point of generation. In this case, the vent stream is produced as a result of the treatment of hazardous waste. EPA has also stated that "thermal treatment after a material becomes a hazardous waste is fully regulated under RCRA". 54 Fed. Reg. 50973.

Therefore, Region 6 believes that the TDU should be regulated as an incinerator under 40 C.F.R. Part 264, Subpart O. However, if they stop routing the vent stream to the combustion chamber/fire box, they would be exempt from regulation [assuming that they meet the requirements of 40 C.F.R. § 261.6(a)(3)(iv)].

We would appreciate your thoughts on this issue. Thanks.

[attachment "Letter from USET to EPA dated 9-24-10.pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "RO 13657.pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "47 FR 27520 (6-24-82).pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "RO 12272.pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "49 FR 5313 (2-10-84).pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "54 FR 50968 (12-11-89).pdf" deleted by Ross Elliott/DC/USEPA/US]

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

IMPORTANT/CONFIDENTIAL: The content of this e-mail is intended only for the use of the individual or entity to whom it is addressed. This message contains information from the U.S. Environmental Protection Agency which may be privileged, confidential, or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this message, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail, and delete this e-mail from your system.

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 1/23/2012 7:11:40 PM
To: Vishnu Katari [Katari.VishnuLNDU@usepa.onmicrosoft.com]; Alan Carpien [Carpien.AlanLNDU@usepa.onmicrosoft.com]; Celeste, Laurel [celeste.laurel@epa.gov]
CC: Ryan Rosser [Rosser.Ryan@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Lutz, Craig [lutz.craig@epa.gov]
Subject: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)
Attachments: Letter from USET to EPA dated 9-24-10.pdf; RO 13657.pdf; 47 FR 27520 (6-24-82).pdf; RO 12272.pdf; 49 FR 5313 (2-10-84).pdf; 54 FR 50968 (12-11-89).pdf

I would like your opinion on whether a certain thermal desorption unit needs a RCRA permit. I got your names from the responsibility lists on the intranet (both OECA and OGC). If you are not the correct person to address this issue, could you please forward it to that person. A description of the process and the legal reasoning is set forth below.

A. Process Description

U.S. Ecology Texas (USET) conducts oil reclamation activities at its Robstown, TX facility. As part of this activity, USET operates an on-site thermal desorption unit to process the oil-bearing materials to reclaim the oil for sale. USET claims that they are recycling hazardous waste pursuant to 40 C.F.R. § 261.6(a)(3)(iv), and therefore are not subject to either 40 C.F.R. Part 264, Subpart O (Incinerators) or Subpart X (Miscellaneous Units).

U.S. Ecology has raised the defense that the vent gas stream that is sent to the combustion chamber is not a solid waste because it is a non-containerized gas [which is exempt from the definition of solid waste in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27)]. A copy of this letter is attached below. The following is a description of their process:

The facility receives waste from refineries and petrochemical facilities. The feed material is fed into a Thermal Desorption Unit (TDU). Heat is applied to the feed material in an indirect heated rotary dryer to separate the organic contaminants and to remove them from the feed material. Nitrogen carrier gas is circulated through the indirect heated dryer. Oil and water are removed from the feed material as it heats in the dryer and are transported to the gas system condensers with the carrier gas. The oil is then recovered by condensing it in a gas treatment system. USET claims that the condensers recover 95% of the VOC HAPs, and 99% of SVOC HAPs with the reclaimed oil product. A process vent is purged from the carrier gas in a closed vent system. According to a USET employee, the vent stream makes up one third of the BTU value need to fire the unit. The vent is to necessary to maintain a negative pressure within the unit and is balanced with a fresh nitrogen supply. This process vent stream is filtered before it is injected into the combustion chamber. The process vent stream includes nitrogen and non-condensable gases from the dryer. USET claims that these remaining uncondensed gases are in a gaseous state at less than 70° F. The process vent gases have a distinct odor. The odors are controlled by injection of the process vent gas into the combustion chamber. USET claims the routing the uncondensed gases back to the combustion chamber further controls VOCs with an estimated removal efficiency of 99%.

B. Legal Analysis

Assume for the sake of this analysis, that USET is accepting only wastes from petroleum refineries, and otherwise meets the requirements of 40 C.F.R. § 261.6(a)(3)(iv). Does the fact that USET routes the uncondensed gases back into the combustion chamber/fire box subject the TDU to the incinerator requirements.

In RO 13657 (attached), EPA stated that "a thermal desorber would be subject to regulation as an incinerator if it was equipped with a fired afterburner to destroy desorbed organic compounds, or if the desorption chamber was directly fired, irrespective of how the desorbed organics were controlled. On the other hand, if the desorption chamber was indirectly heated, and the desorbed organics were not controlled using controlled flame combustion (e.g., no afterburner), the thermal unit would be subject to regulation as a 'miscellaneous unit'." Therefore, under this standard, the TDU would be considered an incinerator since it routes that uncondensed gases back into the combustion chamber.

USET cites 47 Fed. Reg. 27520, 27530 (June 24, 1982) (attached) which states that "fume incinerators which are used to

destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general, the RCRA standards do not apply to fume incinerators since the input is not identifiable as a solid waste, according to the definition set forth in § 261.2." This position is repeated in a July 31, 1984 Memo (RO 12272), which USET also cited.

In RO 12272 (attached), the question was whether the hazardous determination of a waste is or is not suppose to be made at standard temperature and pressure, or whether this determination is to be made in the form (i.e., gas, solid, liquid) that it is generated. In this case, the facility in question had been condensing the gaseous emissions and feeding them along with other gaseous wastes into an incinerator. These gaseous emissions were previously condensed prior to treatment in a flume incinerator. However, the facility planned to feed uncondensed reactor vent gases directly to the fume incinerator. RO 12272 cited the June 24, 1982 Federal Register Notice in the memo. The memo also stated that it was reconsidering its position.

In 49 Fed. Reg. 5313, 5314 (February 10, 1984) (attached), EPA stated in the preamble to a proposed rule that "the exclusion from RCRA of "gaseous materials" that are not contained . . in the Agency's view, applies only to true gases, namely those which are not capable of being condensed and which remain gases at standard temperature and pressure. . . The Agency, of course, is not requiring that these light ends be condensed; however, as a RCRA hazardous waste, these light ends remain subject to the applicable regulations even if left in the gaseous state. Otherwise, one could evade regulation under RCRA simply by heating every waste to the gaseous state."

In 54 Fed. Reg. 50968, 50970 (December 11, 1989), (attached) EPA stated that "with the respect to the proposed listing of light ends [49 Fed. Reg. 5313 listed above], the Agency also included a discussion of its authority under RCRA to regulate uncondensed and uncontainerized gases, which are liquids at standard temperature and pressure. The notice did not propose that the light ends must be condensed; however under the proposal the light ends would have been subject to the applicable regulations, even when they remain in the gaseous state. Based on further analysis, the Agency now believes that our authority under RCRA is limited to the regulation of only containerized or condensed gases."

On the surface it appears that the process vent stream that is injected back into the combustion chamber would not be solid waste. However, Region 6 believes that this vent stream is a RCRA hazardous waste, and therefore the TDU should meet the incinerator standard of 40 C.F.R. Part 264, Subpart O. In this case, USET receives hazardous waste from other facilities, and then treats the hazardous waste in order to recover oil. The vent stream is produced as a result of the treatment of the hazardous waste. Thus, the derived from rule [40 C.F.R. § 261.3(c)(2)(i)] would result in the vent stream being a hazardous waste.

In addition, the references in the 1984 and 1989 relate to the question of whether certain "light ends" were hazardous waste, specifically uncondensed and containerized gases which are liquids at standard temperature and pressure. In other words, the question was whether the "light ends" or gaseous material were hazardous wastes at the point of generation. In this case, the vent stream is produced as a result of the treatment of hazardous waste. EPA has also stated that "thermal treatment after a material becomes a hazardous waste is fully regulated under RCRA". 54 Fed. Reg. 50973.

Therefore, Region 6 believes that the TDU should be regulated as an incinerator under 40 C.F.R. Part 264, Subpart O. However, if they stop routing the vent stream to the combustion chamber/fire box, they would be exempt from regulation [assuming that they meet the requirements of 40 C.F.R. § 261.6(a)(3)(iv)].

We would appreciate your thoughts on this issue. Thanks.

Letter from USET to EPA dated 9-2...	RO 13657.pdf	47 FR 27520 (6-24-82).pdf	RO 12272.pdf	49 FR 5313 (2-10-84).pdf	54 FR 50968 (12-11-89).pdf

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6

1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

IMPORTANT/CONFIDENTIAL: The content of this e-mail is intended only for the use of the individual or entity to whom it is addressed. This message contains information from the U.S. Environmental Protection Agency which may be privileged, confidential, or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this message, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail, and delete this e-mail from your system.

US Ecology Texas, Inc.
3277 County Road 69
P.O. Box 307
Robstown, TX 78380

Facility: (800) 242-3209
(361) 387-3518
Fax: (361) 387-0794
www.usecology.com

US Ecology Texas

RECEIVE
SEP 27 2010
Air/Toxics & Inspection
Coordination Branch
6EN-A

September 24, 2010

Mr. David Robertson
Environmental Protection Specialist
Surveillance Section (6EN-AS)
Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

RE: U.S. Ecology Texas, Inc.
EPA ID No.: TXD 069452340-1
Regulatory Applicability of 40CFR Part 264, Subpart O – Incinerators

Dear Sir:

During EPA's inspection exit interview on June 17, 2010 at U.S. Ecology Texas, Inc. (USET) Robstown facility, you raised a question regarding the re-introduction of process vent gases to the combustion zone of the Thermal Desorption Unit (TDU) and suggested that the activity constituted incineration of a hazardous waste under RCRA. Below is an explanation of USET's interpretation of how the exhaust gases are regulated under RCRA and the CAA. Supporting information that provides the basis for our interpretation is attached.

A memo dated July 31, 1984 (Enclosed) was prepared by John Skinner, Director of the Office of Solid Waste for EPA addressing a similar issue related to the destruction of material in a fume incinerator. The memo references 47 FR 2753, June 24, 1982, where EPA established a position that fume incinerators which are used to destroy gaseous emissions from various industrial processes are not subject to RCRA since the gaseous emissions are not identifiable as a solid waste according to the definition set forth in 261.2. RCRA excludes un-contained gaseous materials from the definition of solid waste (RCRA, Section 1004(27)).

In 49 FR 5314, February 10, 1984 (Enclosed), EPA re-considered this position in the proposal to list light end vent gases from the production of chlorinated aliphatic hydrocarbons. EPA expressed a concern in their discussion that the original determination may encourage generators to design processes to maintain waste in a gaseous state as to avoid regulation under the RCRA. In the 1984 proposal EPA modified their position that if the wastes are a liquid at standard temperature and pressure, and can reasonably be condensed to the liquid phase after generation, the material should be regulated under RCRA. They continue in the discussion to propose that the condensable fraction of the gas stream should be regulated as a hazardous waste while the non-condensable fraction should be regulation under the CAA.

The final rule listing light end vent gases from the production of chlorinated aliphatic hydrocarbons was published in 54 FR 50973, December 11, 1989 (Enclosed). EPA's position was again modified based on further consideration by EPA and after reviewing comments received during the rule comment period. EPA concluded that their authority under RCRA is limited to containerized or condensed gases since RCRA excludes all other gases from the definition of solid waste. EPA stated that they do believe it can

use its current permitting procedures to mandate the production process design of a manufacturing facility so that it generates a waste as a liquid instead of a gas. They dropped the interpretation that split the un-contained gases into condensable and non-condensible fractions. As a result, EPA determined that un-contained gaseous emissions are not regulated under RCRA but would be regulated under the CAA.

Based on the extensive discussion, public comment and consideration on this matter by EPA, we concluded that the exhaust gases generated by the TDU process are not considered "solid waste" and therefore not subject to regulation under RCRA. The exhaust gases from the TDU are directly reintroduced into the combustion chamber and never stored or contained. EPA describes the "fume incinerator" process in its 1984 memorandum as a basis for EPA's regulatory intent. The process description in the memo is a close representation of the exhaust gas re-circulation process used in the TDU. The reintroduction of exhaust gases from the TDU into the combustion chamber should not be considered incineration under the Clean Air Act. USET worked closely with TCEQ on the permitting of this project under the State of Texas' air quality program. We engaged the agency early in the review of the air quality permitting requirements for this project and worked closely with them to evaluate the project.

If there are any questions or concerns on this information, please feel free to contact Tim Parker at (361) 387-3518 x216 or tparker@usecology.com.

Sincerely,

Mark John
General Manager

Enclosures: July 31, 1984 EPA Memo
49 FR 5314, February 10, 1984
54 FR 50973, December 11, 1989

RECEIVE
SEP 2 7 1984
Air/Toxics & Inspection
Coordination Branch
6EN-A

PPC 9441.1984(15)

INCINERATORS THAT RECEIVE GASEOUS EMISSIONS, RCRA EXCLUSION, CAA APPLIES

7-31-84

MEMORANDUM

SUBJECT: Ignitability Characteristic Application to Hot Gaseous Process Emissions

FROM: John H. Skinner, Director
Office of Solid Waste

TO: James H. Scarbrough, Chief
Residuals Management Branch, Region IV

In your June 27, 1984, memorandum you requested our guidance as to whether the hazardous determination of a waste is or is not supposed to be made at standard temperature and pressure or whether this determination is to be made in the form (i.e., gas, solid, liquid) that it is generated.

In particular, you raised concerns about the destruction of materials in fume incinerators and argued that facilities could avoid regulation by simply not condensing vent gas and overhead emissions. You also argued the §261.21(a)(2) states that wastes which are not liquids must be evaluated for the ignitability characteristic at standard temperature and pressure.

At the facility in question, the generator had been condensing the gaseous emissions and feeding them along with other gaseous wastes into an incinerator. These gaseous emissions were previously condensed prior to treatment in a fume incinerator. This same facility now plans to feed uncondensed reactor vent gases directly to the fume incinerator (i.e., will not be condensing the gases and will only be sending gaseous emissions to the incinerator).

As you may be aware, our office previously addressed this issue when we finalized the incinerator regulation in June of 1982. In the preamble to that rule, we said that the

ED_002427B_00006845-00003

feed to fume incinerators are subject to regulation only under the Clean Air Act and not under RCRA since these gaseous emissions are not solid wastes (see 47 FR 27530, June 24, 1982). In particular, we stated:

> "EPA agrees with commenters that fume incinerators are subject only to regulation under the Clean Air Act and does not intend that the Parts 264 and 265 regulations apply to these facilities. Fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general, the RCRA standards do not apply to fume incineration since the input is not identifiable as a solid waste, according to the definition set forth in §261.2".

However, we recently indicated in the Fecderal Register (49 FR 5314, February 10, 1984) that we are re-considering this position. In particular, in a proposal to list light end vent gases from the production of chlorinated aliphatic hydrocarbons, we stated that gaseous emissions which are condensable to liquids at standard temperature and pressure can be subject to regulation and would not be included in the exclusion of gaseous materials under RCRA (see Section 1004(28)). See preamble to proposal where we stated:

> ".... The light ends component of these overheads is in fact liquids at standard temperature and pressure, but because of elevated temperature and and admixture with gases (e.g., hydrogen, methane) they require some form of physical condensation to be isolated as liquids.....
>
> The Agency considers these light ends to be solid wastes within the meaning of Section 1004(2) of RCRA. Although these wastes are generated as gases, they are liquids at standard temperature and pressure, and can feasibly be condensed to the liquid phase after generation.
>
> The exclusion from RCRA of 'gaseous materials' that are not contained (Section 1004(28)), in the Agency's

> view, applies only to true gases, namely those which are not capable of being condensed and which remain gases at standard temperature and pressure.

Therefore, until we decide whether and how to finalize the proposal, we must defer a final answer to your question. In the interim, however, any incinerator that just receives gaseous emissions would be excluded from control under RCRA, as stated in the preamble to the final incinerator rules. At the same time, you should be aware that the rules may change and that incinerators that receive gaseous emissions, which are liquids at standard temperature and pressure, may be subject to regulation in the future.

If you have any further questions, please call Matt Straus of my staff at 475-8551.

The contaminants include chlorinated aliphatic hydrocarbons as well as aromatic compounds and chlorinated aromatic compounds that are currently identified in Appendix VIII of Part 261. The potential of all of these contaminants to cause harm to human health and the environment is described in the accompanying interim final listing notice, the listing Background Document, and the Health and Environmental Effects Profiles.

The wastes covered by these regulations are formed as residuals at several points in an integrated series of reactors and associated purification units utilizing one or more free radical catalyzed chemical conversion steps to produce a range of desired chlorinated aliphatic hydrocarbons. This proposed listing covers wastes from all sources within an integrated process untilizing free radical catalyzed conversions, whether or not the integrated process utilizes free radical catalyzed conversions solely or in conjunction with other types of chemically catalyzed conversions.

The usual plant sources of the light ends derive from the hot, gaseous overhead streams from reactor vessels and/or associated purification and distillation equipment. The light ends component of these overheads is in fact liquids at standard temperature and pressure, but because of elevated temperature and admixture with gases (e.g., hydrogen, methane) they require some form of physical condensation to be isolated as liquids. For example, freon condensors coupled with water condensors are currently used by industry to recover light ends, products, unreacted feedstock, or wastes from the overheads. Incineration, flaring, or release to the atmosphere of light ends, without either partial or complete condensation to ambient temperature, is also practiced.

The Agency considers these light ends to be solid wastes within the meaning of section 1004(28) of RCRA. Although these wastes are generated as gases, they are liquids at standard temperature and pressure, and can feasibly be condensed to the liquid phase after generation.

The exclusion from RCRA of "gaseous materials" that are not contained (section 1004(28)), in the Agency's view, applies only to true gases, namely those which are not capable of being condensed and which remain gases at standard temperature and pressure (for example, the hydrogen and methane admixed with the light ends). The Agency, of course, is not requiring that these light ends be condensed; however, as a RCRA hazardous wastes, these light ends remain subject to the applicable regulations even if left in the gaseous state. Otherwise, one could evade regulation under RCRA simply by heating every waste to the gaseous state.[1]

The spent filters and filter aids, and spent dessicants are generated as residuals furing product intermediate and feedstock purification. These wastes are currently managed by landfilling, incineration, or regeneration and recycling.

As shown in the Background Document, the hazardous constituents generally are present in these waste in significant concentrations, typically in concentrations many orders or magnitude above the levels related to human health concerns. For example, an analysis of one manufacturer's chlorinated propane distillation light ends (Table 1) shows the hazardous constituents at concentrations typically found in these wastes.[2] Chemical analyses obtained by the Agency and company supplied information in the Section 3007 RCRA Industry Studies data base demonstrate similar high concentrations of toxicants in all these wastes.[3] Although there were many differences between these wastes, both qualitatively and quantitatively, in all cases, there were one or more of the toxicants of concern present at levels which could present a substantial environmental hazard if the wastes are mismanaged.

TABLE 1.—CHLORINATED PROPANE DISTILLATION LIGHT ENDS

Constituent	Percent
dichloromethane and isopropyl alcohol [4]	[5] 0.7
chloroform, acetonitrile and dichloropropene	4.0
ethyl chloride [4] and 2-chloropropanes/propenes	17.0
1,1-dichloroethane	4.0
1,2-dichloroethane	0.2
chloropropane [4]	22.0
chloropropene	16.0
chlorodihydroxypropanes [4]	0.2
dichloropropanes	12.0
dichloropropenes	14.4
dichloropropanols [4]	0.2
epichlorohydrin	0.4

[1] The Agency has previously listed distillation light ends from the production of phthalic anhydride from naphthalene and orthoxylene as hazardous wastes K023 and K093 (40 CFR 261.32), thus establishing a precedent for regulating a waste which originates from a gaseous overhead process stream. No comments were received questioning the Agency's authority to regulate these wastes.

[2] U.S. EPA. Disposal of Organochlorine Wastes by Incineration at Sea. EPA Publication No. 430/9-75-041 (1975).

[3] The results of these analyses have been claimed by the individual companies to be confidential business information, and therefore are not presented here. The Background Document and supporting information for this action provides aggregate toxicant concentration ranges for the C_1 through C_3 process wastes sampled.

TABLE 1.—CHLORINATED PROPANE DISTILLATION LIGHT ENDS—Continued

Constituent	Percent
benzene	0.7

[4] At the present time, the Agency does not have adequate information to classify these constituents as toxicants of concern.

[5] (i.e., 7,000 parts per million).

The Agency has calculated that persons face a 1 per million increase risk of cancer or other adverse health effects as a result of lifetime ingestion of water when the water is contaminated at levels above the Ambient Water Quality Criteria Levels (AWOCL). As an indication of how high toxicant concentrations in these wastes are, the benzene alone in the light ends waste approaches ten million times the AWOCL. The other toxic constituents likewise are frequently present in concentrations orders of magnitude greater than the AWOCL.

In all cases, the solubilities of the toxicants of concern are many orders of magnitude greater than the AWOCL. Thus, only a small fraction of the toxicants present in these wastes need migrate and reach environmental receptors to pose the potential for substantial harm if these wastes are landfilled improperly. Improper incineration is another exposure pathway of concern.

In summary, and as detailed in the listing Background Document, these wastes typically contain toxicants at concentrations that are of concern, these toxicants are capable of migration and persistence in hazardous concentration, and therefore these wastes are capable of causing substantial harm if mismanaged.

IV. Economic, Environmental and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The effect of the present amendment is judged to be minor.

The total combined cost for disposal of the wastes as hazardous, assuming that all of these wastes would be managed for the first time as hazardous, and making conservative assumptions as to costs, is approximately $15 million per year. This figure also overstates costs because information available from the Section 3007 RCRA Industry Studies data base indicates that over one fourth of these wastes are *already* being managed as hazardous waste at RCRA facilities. For these wastes, listing

HeinOnline -- 49 Fed. Reg. 5314 1984

questioned in 1980 was because, at that time, it was assumed that the listing only applied to the light ends in the condensed state. One commenter further argued that the phthalic anhydride light ends listing was not analogous, since the phthalic anhydride light ends contained maleic anhydride and phthalic anhydride, which was emitted from the process as particulates.

In addition, commenters objected to regulation under RCRA of gaseous emissions for other reasons, including that permitting would have a significant economic impact; that there currently are no standards for flares (and subsequently, permitting would be difficult); that regulation of fugitive emissions of gaseous liquids from valves and pipes might follow regulation of gaseous light ends under RCRA; that condensation of light ends to ambient temperature could cause equipment corrosion; and that the Agency had not adequately characterized these gaseous emissions.

In its proposal, the Agency explained that it believed that the exclusion from RCRA of gaseous materials that are not contained applied only to "true gases"—namely, those which are not capable of being condensed and which remain gaseous at standard temperature and pressure. Our concern was that a plant could evade regulation by designing a process to keep the process emissions in a gaseous state. See 49 FR 5314, February 10, 1984. Such a result could create human health and environmental concerns. For example, in the Bhopal incident, a volatile liquid (methyl isocyanate) escaped confinement from a storage tank in a situation analogous to the storage of condensed light ends.

Upon reconsideration of this issue (with the benefit of the comments received on the proposed rulemaking), EPA now believes our authority to identify or list a waste as hazardous under RCRA is limited to containerized or condensed gases (*i.e.*, section 1004(27) of RCRA excludes all other gases from the definition of solid wastes and thus cannot be considered hazardous wastes).[5]

EPA, therefore, has decided not to regulate these uncondensed light ends. In the case of chlorinated aliphatic hydrocarbon manufacture, the Agency knows that manufacturers typically employ condensation devices in conjunction with distillation equipment, since the condensable fraction of these emissions is either a valuable product or recyclable feedstock material. If the light ends are condensed and reused to make new products or effective substitutes for commercial products, they will not be considered solid or hazardous wastes, as long as they have not been reclaimed and they do not meet the criteria specified in § 261.2(e). See 50 FR 637. If every disposed (prior to any such reuse), however, these condensed light ends would be considered a solid waste and subject to today's listing. Consequently, our decision should not present an environmental concern.

Although we agree with the commenter that heating wastes to the gaseous state is subject to regulation under RCRA as treatment of hazardous waste, the Agency believes that it cannot use its current permitting procedures to mandate the production process design of a manufacturing facility so that it generates a waste as a liquid instead of (for example) installing some internal heating mechanism that generates the same liquid waste in the gaseous state. RCRA jurisdiction does not provide this kind of control over manufacturing processes. Of course, thermal treatment *after* a material becomes a hazardous waste is fully regulated under RCRA.

The Agency also agrees with the commenters that citing the phthalic anhydride light ends listing raises substantial questions with respect to establishing precedents. We have, accordingly, deleted references to it in the listing description and preamble.

D. Evaluation of the Hazardous Properties of the Wastes

Other comments expressed specific concerns with the Agency's evaluation of the hazardous properties of the wastes, either through its toxicological evaluations of individual hazardous constituents, its projection of concentration levels of constituents in the wastes, or its analysis of the ability of the constituents to migrate from the wastes.

1. Two commenters stated that some of the conclusions reached by the Agency do not accurately reflect the present state of knowledge of the oncogenic properties of the constituents in these wastes. They commented that the Agency did not attempt to clarify the level of risk (of carcinogens) or to provide substantiation of its conclusions that the Carcinogen Assessment Group (CAG) assessment documents on which the Agency relied are consistent with "current levels of knowledge and existing data they also stated that the Agency should have used weight of evidence characterizations in its assessment of the potential hazards of these compounds. In particular, the commenters asserted that the Agency should not have judged constituents to be "potential human carcinogens" when the evidence for carcinogenicity for several of these chemicals would fall into "Group 3: chemicals which cannot be classified as to their carcinogenicity to humans."

The agency's judgment on the potential carcinogenic and toxic effects resulting from continued low-level exposure to the constituents of concern are outlined in the Health and Environmental Effects Profiles for each constituent of concern. The major health concerns are summarized in the listing background document. The commenter gave no specific criticism that EPA's facts do not "reflect the present state of knowledge," (other than that noted above) and did not provide any additional data or other information to challenge the basis for EPA's decision to list. We are, therefore, unable to respond to this criticism. (It should be noted that the Agency has reviewed more recent studies addressing these constituents, and finds that this information corroborates the Agency's original decision to list. This information has been summarized and placed in the docket.)

With respect to the "weight-of-evidence" argument, the Agency promulgated guidelines for carcinogenic risk (see 51 FR 32656, September 24, 1986) which incorporates an assessment of the quality of experimental data for the overall hazard assessment for carcinogens. These guidelines specify the following five classifications:

Group A—Human carcinogen (sufficient evidence from epidemiologic studies)

Group B—Probable human carcinogen

Group B_1—Limited evidence of carcinogenicity in humans

Group B_2—A combination of sufficient evidence in animals and inadequate or no evidence in humans

Group C—Possible human carcinogen (limited evidence of carcinogenicity in the absence of human data)

Group D—Not classifiable as to human carcinogenicity (inadequate human and animal evidence of carcinogenicity or no data available)

[5] EPA's previously issued guidance concerning fume incinerators (contained in the preamble to the incineration regulations) remains in effect. See 47 FR 27530, June 24, 1982. Fume incinerators are installed as air pollution control devices pursuant to regulations under the Clean Air Act; they are used to destroy gaseous emissions from various industrial processes. EPA concluded that, in general, RCRA standards do not apply to fume incinerators because the input (an uncontainerized gas) is not a solid waste according to the definition set forth in § 261.2.

HeinOnline -- 54 Fed. Reg. 50973 1989

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 3/15/2012 9:41:21 PM
To: Mark Hansen [Hansen.MarkLNDU@usepa.onmicrosoft.com]; Tidmore, Guy [tidmore.guy@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Ryan Rosser [Rosser.Ryan@epa.gov]; Michael Barra [Barra.MichaelLNDU@usepa.onmicrosoft.com]; Seager, Cheryl [Seager.Cheryl@epa.gov]
CC: Lutz, Craig [lutz.craig@epa.gov]; Herrera, Esteban [Herrera.Esteban@epa.gov]; Garcia, David [Garcia.David@epa.gov]
BCC: Sheridan, MaryBeth [Sheridan.MaryBeth@epa.gov]; Mooney, Charlotte [Mooney.Charlotte@epa.gov]; Alan Carpien [Carpien.AlanLNDU@usepa.onmicrosoft.com]; Vishnu Katari [Katari.VishnuLNDU@usepa.onmicrosoft.com]; Elliott, Ross [Elliott.Ross@epa.gov]
Subject: U.S. Ecology/TD*X Associates RCRA Case
Attachments: 2012_02-22_mbr_Pearson_LtrReFollow-upTo02-14-12MeetingW-Attachs(Final).pdf; TCEQ Duratherm Memo.pdf

As you know, I am been instructed to prepare a RCRA complaint for filing against U.S. Ecology (USET) and TD*X Associates (TDX). One of the major issues in this case is whether the act of sending uncondensed gases from the treatment of hazardous waste and/or recyclable materials (which are hazardous waste) in the thermal desorption unit (TDU) into the combustion chamber of the TDU makes the TDU an "incinerator", and thus requiring a hazardous waste incineration permit. This issue turns on the issue of whether this uncondensed gas is a "solid waste". USET/TDX contend that this is a uncontainerized gas, and thus is not a "solid waste". They rely on a number of EPA Memos and Guidance documents for this position. Also, since this gas comes from the treatment of hazardous waste, they contend that under the derived-from rule, it is also an uncontainerized gas, and thus not a "solid waste". They have also provided a 1996 TCEQ memo regarding Duratherm that supports their position that uncondensed gases sent to a thermal oxidizer is not a solid waste.

In many cases, we can distinquish the EPA memos. For example, EPA has stated that fume incinerators which are used to destroy gaseous emissions from various industrial processes are not subject to RCRA because the input is not indentifiable as a solid waste. We can distinquish fume incinerators from the USET/TDX case because in that memo, the gases in question are process gases, that is, gases that are emitted from process units (at the point you make a hazardous waste determination). In other words, it was never a solid waste to begin with. In this case, we have hazardous waste in the solid form, that as result of heating, turns a portion of the material into a gas, which is then sent to the combustion chamber. EPA has stated that "heating wastes to the gaseous state is subject to regulation under RCRA as treatment of hazardous waste" and that "thermal treatment after a material becomes a hazardous waste is fully regulated under RCRA." 54 Fed. Reg. 50968, 50973 (December 11, 1989). The purpose of this discussion is not to say that we shouldn't file the case, but to point out that there is a significant amount of litigation risk associated with the case. I will continue my discussions with HQs regarding this issue. I have attached a copy of USET/TDX's arguments, along with a copy the TCEQ memo regarding Duratherm. I have not prepared a formal written response to their arguments, but I can orally brief anyone regarding our counterarguments.

There is, however, another factor to consider. In our meeting with USET and TDX today, they stated that if they were required to get a hazardous waste permit, it would force them to shut down. First, they claim that the economics of the situation require that they run 24/7 (excluding maintenance downtime, etc.). However, under their current hazardous waste permit, they are only permitted to operate from 7 a.m. to 8 p.m. They don't think that TCEQ would allow them to run 24/7. Also, they don't believe that because of the public, that TCEQ would issue them a permit, and that there hasn't been a new incinerator permit for several years. They also contend that based on the TCEQ Duratherm memo, that TCEQ may not issue them a permit because the gases going to the combustion chamber are not a solid waste. Finally, they contend that there are a number of TDUs in the country, including a few in Region 6, that operate the same way and are not permitted.

Please let me know if you wish to discuss any issues in this case, or to discuss any options for addressing these issues. According to the RCRA Nationally Significant Issues Guidance, these issues would be considered nationally significant, and therefore need to be raised to HQs before the filing of the complaint or the beginning of negotiations.

2012_02-22_mbr... TCEQ Duratherm Memo.pdf

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

IMPORTANT/CONFIDENTIAL: The content of this e-mail is intended only for the use of the individual or entity to whom it is addressed. This message contains information from the U.S. Environmental Protection Agency which may be privileged, confidential, or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this message, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail, and delete this e-mail from your system.

LAW OFFICES
McGINNIS, LOCHRIDGE & KILGORE, L.L.P.
600 CONGRESS AVENUE
SUITE 2100
AUSTIN, TEXAS 78701

HOUSTON, TEXAS OFFICE
1111 LOUISIANA STREET, SUITE 4500
HOUSTON, TEXAS 77002
(713) 615 - 8500
FAX (713) 615-8585

AUSTIN, TEXAS OFFICE
(512) 495 - 6000
FAX (512) 495 - 6093

WRITER'S DIRECT DIAL NUMBER:
495-6013
mreagan@mcginnislaw.com
Fax: (512) 505-6313

February 22, 2012

VIA E-MAIL

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U. S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: U.S. Ecology, Inc.
TD*X Associates

Dear Evan:

This letter follows up on certain issues discussed at the February 14, 2012 meeting between U. S. Ecology, TD*X Associates, and EPA concerning the permitting status of the thermal desorption unit ("TDU") under RCRA. You indicated at that meeting that because the process vent gases from the oil reclamation process are routed to the TDU, the TDU is an incinerator which requires a RCRA permit. However, as we pointed out in the meeting, this contention is incorrect because the process vent gases are not "solid wastes" subject to RCRA jurisdiction.

The term "solid waste" is defined in RCRA as any "solid, semi-solid, liquid, or *contained gaseous material.*" 42 U.S.C. § 6903(27) (West 2011) (emphasis added). The process vent gases originating at the TDU are uncontained gases; therefore, these gases are not regulated under RCRA because they are not solid waste subject to RCRA jurisdiction, permitting or otherwise. At our meeting we provided EPA with a copy of a document from the Office of Management and Budget ("OMB") reciting the longstanding EPA precedent that uncontained gas is not a solid waste. Another copy of this document is attached to this letter as Attachment "A." Among the precedent cited in this document is an EPA guidance document entitled "Hazardous Waste TSDF-Technical Guidance Document for RCRA Air Emission Standards for Process Vent and Equipment Leaks." Although relevant excerpts from this EPA guidance document were also provided to you at our meeting, another copy is attached to this letter as Attachment "B." We would draw your specific attention to the Note on pages 2-3, which directly addresses the regulatory status of process vent streams under RCRA, and states that "[n]containerized gases emitted from hazardous wastes are not themselves hazardous wastes because the RCRA statute implicitly excludes them." *See* also McCoy's RCRA Unraveled

(2009), § 14.5.3.1 (" . . . vent streams (i.e. gases and vapors) from hazardous waste management units are not classified as solid or hazardous wastes.")

As we discussed in our meeting, the definition of solid waste as including only "contained gaseous material," and not uncontained gases like the TDU's process vent stream, defines the jurisdictional boundaries between RCRA and the federal Clean Air Act. This precise point was made in a training document prepared for The Advanced RCRA Inspector's Institute discussing the "RCRA/Clean Air Act Interface," relevant excerpts of which are attached as Attachment "C." Prepared for the express purpose of training RCRA inspectors to conduct proper RCRA inspections, this document acknowledges that uncontained gases are not solid waste. Specifically, in discussing the regulatory status of organics in activated carbon units, it provides that "[t]rapped organics in such columns are not hazardous waste because the gas being treated is not a solid waste (it is an uncontained gas), and therefore any condensed organics do not derive from treatment of a hazardous waste."

The conclusion that uncontained gases are outside the scope of RCRA was articulated by EPA Headquarters as recently as May 13, 2011, in a letter from Suzanne Rudzinski, Director, Office of Resource Conservation and Recovery, EPA, to Tim Hunt, Senior Director Air Quality, American Forest and Paper Association. A copy of this letter is attached as Attachment "D." That letter recites:

> The response does not change any previous EPA positions. We clarify here that the Agency's previous statements and interpretations remain effective. Thus, burning of gaseous material, such as in fume incinerators (*as well as other combustion units*, including air pollution control devices that may combust gaseous material) does not involve treatment of other management of a solid waste (as defined in RCRA section 1004 (27))(emphasis added).

The letter which you relied on in our meeting (OSWER 9489.1994(01)) for EPA's position that the TDU is a RCRA-regulated incinerator is not on point. That letter concerns a general discussion of the regulatory status of thermal treatment units and whether chlordane contaminated soil can be effectively and safely treated by thermal desorption. The unit referred to in the letter appears to be a hazardous waste treatment unit that is not operating under any RCRA exclusions or exemptions. The chlordane hazardous waste treatment requires a RCRA permit to treat the soil in the desorber unit without regard to how the vent gases from the unit are managed. The letter attempts to distinguish which provision under RCRA the unit should be permitted based on how the desorbed organic compounds are managed. The letter does not address whether the desorbed organics from the process are "uncontained gases," which is the premise of U.S. Ecology's position that uncontained gases are not regulated under RCRA. We do not disagree with the premise that the chlordane treatment unit described in the letter requires a RCRA permit. However, we continue to disagree that that a RCRA permit is required for the sole purpose of ducting uncontained vent gases to the combustion zone of the TDU. (It should also be noted that this letter is inconsistent on other grounds with your position that the TDU is

an incinerator. It states that desorption chambers with indirect heating are miscellaneous units, not incinerators.) A copy of this letter is attached as Attachment "E."

EPA's assertion that process vent gases from the TDU are solid waste because they are "derived from" the treatment of solid waste is equally invalid. Under the express terms of the "derived from" rule, materials must first be wastes before they can be RCRA-regulated because they are derived from the treatment, storage, and disposal of solid waste. *See* 40 CFR § 261.3 (c)(2)(i) ("[A]ny *solid waste* generated from the treatment, storage, or disposal of a hazardous waste . . . is a hazardous waste" (emphasis added)). As the foregoing EPA precedent unmistakably shows, the process vent gases are not solid wastes covered by the "derived from" rule. This point was specifically made in the training document provided in Attachment "C" to this letter in its conclusion that because the gas from activated carbon units was not solid waste, "any condensed organics do not derive from treatment of a hazardous waste."

In summary, the process vent gases produced at the TDU are not solid wastes; therefore, EPA lacks RCRA jurisdiction to assert that the introduction of these gases to the TDU is a waste management activity subject to permitting or enforcement under RCRA.

Sincerely,

Mary Reagan

MBR/rrh
Attachments

ATTACHMENT “A”

EPA's Prior Determinations That Landfill Gas is Not a Solid Waste

- Since 1986, EPA has determined under RCRA that landfill gas would be regulated as an "air pollutant", rather than as "solid waste" In that regard, the regulation of MSW landfill emissions was considered during deliberations under a RCRA subtitle D rulemaking. In 1986 and 1987 the Administrator decided to regulate these emissions under the authority of the Clean Air Act. See, e.g. March 6, 1986 Memorandum from Marcia Williams to H. Lanier Hickman, Jr. (attached), cited in Definition of Solid Waste Compendium, Volume U, (Un)-Contained Gases (December 2010)(attached) (see particularly page 9, which refers to the Hickman memorandum and which characterizes landfill gas as "uncontained" and therefore not "solid waste"). After further consideration, the EPA announced in the Federal Register on August 30, 1988 (53 Fed. Reg. 33,314) (attached) their decision to regulate MSW landfill emissions under section 111 of the CAA. This ultimately occurred through the promulgation of the landfill NSPS, 40 CFR Part 60, Subparts WWW and Cc in 1996.

- In the proposed Landfill NSPS standards published on May 30, 1991 (56 Fed. Reg. 24,468) (attached), EPA again reiterated its decision to treat landfill gas as a Clean Air Act pollutant (rather than as solid waste).

- The issue was re-raised during public comment for the proposed NSPS. In response, EPA specifically stated in response: "the RCRA subtitle D establishes a framework for controlling the management of nonhazardous solid waste. Because the intent of this rule is to regulate emissions of landfill gas, and not solid waste, this regulation has been developed under the CAA instead of under RCRA. Some requirements in the RCRA subtitle D regulation are referenced within the NSPS and EG and are necessary to achieve compliance with these regulations." See Air Emissions From Municipal Solid Waste Landfills – Background Information for Final Standards and Guidelines, EPA-453/R-94-021 (December 1995), at pages 1-4, 2-31 to 2-34 (attached). Thus, the concept of utilizing RCRA authority and regulating landfill gas as solid waste was specifically rejected by EPA at that time. "Although one commenter suggested that LFG emissions should be regulated under RCRA authority, the EPA continues to consider Section 111 NSPS and EG to be the appropriate statutory approach for regulating these emissions because the adverse health and welfare effects of concern result from air emissions. Therefore, the final notice added MSW landfills as a source category for regulation under Section111(b)(1)(A) of the CAA to the priority list in 40 CFR 60.16." See id.

- On January 16, 2003, EPA issued National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (68 Fed. Reg. 2,227), which ensured that landfill gas collection and treatment and/or control systems (including combustion units and landfill gas used on or offsite in beneficial use projects) achieved MACT level controls.

- EPA again noted on March 22, 2004, in revisions to its Criteria for Municipal Solid Waste Landfills, Final Rule for Research, Development and Demonstration Permits for Municipal Solid Waste Landfills:

"With the exception of explosive gas control requirements, landfill gas controls are not regulated pursuant to Subtitle D of RCRA: rather landfill gas emissions are regulated under the Clean Air Act (CAA). The air criteria in 40 CFR 258.24 refer to CAA requirements by requiring compliance with the applicable State Implementation Plan provisions under section 110 of the CAA. Specific requirements pertaining to landfill gas emissions from MSWLF units are addressed in 40 CFR Part 60,Subparts Cc and WWW. Recently, EPA promulgated National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (68 FR 2227, Jan. 16, 2003). This rule includes requirements for initiating landfill gas collection and control in bioreactor landfills. See 40 CFR Part 63, Subpart AAAA.... [C]onsistent with section 1006(b) of RCRA, EPA sees no need for additional requirements under RCRA to address air emissions in today's rule."

See Final Rule, Research, Development and Demonstration Permits for Municipal Solid Waste Landfills, 69 Fed. Reg. 13,242 (2004) (attached).

- Thus, by 2004, all landfills regulated under WWW were regulated under the Section 112 Landfill MACT standards promulgated at 40 CFR Part 63, Subpart AAAA. In all instances, the notion was that landfill gas would be combusted either in open flares, enclosed combustors (enclosed flares, turbines, engines or boilers), or the gas would be treated (compressed, filtered to 10 microns or less, and cooled or chilled) and routed for use as fuel as either onsite or offsite. When combusted in turbines, engines or boilers, the landfill gas is either controlled to NSPS-specified treatment limits, or it is "treated" as per the NSPS for end use.

- Having exercised its asserted authority under RCRA Section 4004 to regulate air emissions from landfills as a "designated air pollutant" under the Clean Air Act rather than as solid waste under RCRA, the combustion of this designated air pollutant in a flare, turbine, boiler or engine should not be deemed to be the combustion of a solid waste. Stated differently, something cannot be a designated air pollutant and a solid waste at the same time.

- For purposes of Section 129, the term "solid waste' has the meaning established by the Administrator pursuant to the Solid Waste Disposal Act. The meaning established for many years by the Administrator pursuant to the Solid Waste Disposal Act (RCRA) was that landfill gas would not be treated as solid waste, and its combustion would not be treated as solid waste combustion, but rather, as an uncontained gaseous emission regulated as a designated air pollutant by the Clean Air Act. There is nothing in the Non-Hazardous Secondary Materials Rule (NHSM) that establishes that landfill gas is a solid waste, and the regulatory impact analysis for the CISWI rule gave no consideration of landfill gas as a source type for establishment of MACT. Indeed, the NHSM establishes that solid waste follows the meaning of solid waste for purposes of Subtitle D, 40 CFR 258.2. That definition excludes uncontained gas from the definition of solid waste, and has via rulemaking always excluded landfill gas.

Longstanding EPA Precedent that Uncontained Gas is not a Solid Waste

- The statutory definition of "solid waste" includes "contained gaseous material." 42 USC § 6903(27).

- EPA interpretation of the term "contained gaseous material" demonstrates that RCRA only applies to "contained" gases, to the exclusion of "uncontained" gases.

- EPA's interpretation of "contained" has been limited to gas present inside "containers."

    - In a 1989 preamble to a final rule dealing with the listing of certain hazardous substances under RCRA, EPA stated that EPA "believes our authority to identify or list a waste as hazardous under RCRA is limited to *containerized* or condensed gases (i.e., section 1004(27) of RCRA excludes all other gases from the definition of solid wastes and thus cannot be considered hazardous wastes). *See* Hazardous Waste Management System: Identification and Listing of Hazardous Waste, 54 Fed. Reg. 50968, 50973 (Dec. 11, 1989).

    - The CISWI Rule promulgated in 2000 defined contained gaseous material as limited to "gases that are in a container when that container is combusted." (EPA provided no explanation for deletion of this definition, which was not mandated or even discussed in the D.C. Circuit's *NRDC* decision.)

    - Similarly, 40 CFR Part 60, Subpart EEEE, governing Other Solid Waste Incineration Units, includes the same definition of "contained gaseous material."

- EPA has a longstanding policy providing that fume incinerators are subject to regulation only under the CAA, and not also RCRA.

    - For example, in the preamble to a 1982 dealing with regulation of incinerators that burn hazardous waste, EPA stated that "fume incinerators are subject only to regulation under the Clean Air Act . . . . Fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general, the RCRA standards do not apply to fume incinerators since the input is not identifiable as a solid waste." See The Hazardous Waste Management System, Interim Final Amendments to Interim Final and Final Rules, 47 Fed. Reg. 27,520, 27,530 (June 24, 1982). See also, RCRA Superfund Hotline Monthly Summary, 9488.1986(03) available at RCRA Online.

    - EPA has reaffirmed this position on subsequent occasions. For example, in the 1989 preamble discussed above, EPA stated that "fume incinerators are installed as air pollution control devices pursuant to regulations under the Clean Air Act; they are used to destroy gaseous emissions from various industrial processes. EPA concluded that, in general, RCRA standards do not apply to fume incinerators because the input (an uncontainerized gas) is not a solid waste." 54

Fed. Reg. 50,973 n.5. See also, Memorandum from Matthew Straus, Chief, Waste Characterization Branch, to Clifford Ng, Engineer, EPA Region II, dated June 17, 1987, available at RCRA Online ("Methanol-laden air from the drying and granulation step of the process does not meet the definition of solid waste under RCRA because it is in vapor form and not confined in a container.")

- On a few occasions, some in EPA attempted to take a broader view of contained gas (e.g. piping was enough) but that view was rejected by the courts or the administrative tribunal. See, e.g. In re BP Chemicals America, Inc., RCRA Appeal No. 89-4, 1991 EPA App. LEXIS 27; 3 E.A.D. 667 (EPA Admin., Aug. 20, 1991) (The Administrator specifically rejected Region V's argument that gaseous emissions were "contained" by the process units they passed through, associated piping or the facility itself, holding that the Agency's definition of the term "contained" has consistently been confined "in the narrower sense of being in an individual container such that the gas is amenable to shipment"). See also In re: Chemical Waste Management of Indiana, Inc., RCRA Appeal No. 95-4, *1995 EPA App. LEXIS 31*(EPA Environmental Appeals Board, Aug. 23, 1995) (emissions from microencapsulation of hazardous debris) (The EAB concludes the air emissions are excludable from Subtitle C regulation "because the air emissions that the Region seeks to regulate are not containerized.")

- In the landfill gas context, that view was similarly rejected by stakeholder groups assigned to review combustion issues. See, e.g., Recommendation from the Incinerator Workgroup on Section 112 Subcategories April 28, 1998 ("Section 129 Requirements. Section 129 applies to "solid waste combustion." Because solid waste is defined to exclude gases (except gases which are in containers), Section 129 does not apply to landfill gas flares.") (available at http://www.epa.gov/ttn/atw/iccr/incin/rec-112.pdf).

- The final Boiler MACT rule expressly recognizes that landfill gas constitutes a "gaseous *fuel*." (76 Fed. Reg. 15,684)

- See also:

  - Burning of Hazardous Waste in Boilers and Industrial Furnaces, Final Rule, 56 Fed. Reg. 7134, 7200 (Feb. 21, 1991) (activated carbon units used as air emission control devises are not subject to RCRA because "the gas originally treated is not a solid waste (it is an uncontained gas)." See also RCRA Online Determinations 12783 (November 20, 1986) (Volatile organics released to the air are not hazardous waste because they are not solid wastes. (They do not fit the definition established in §1004(27) of RCRA as "contained gaseous materials.")"

  - Hazardous Waste TSDF - Technical Guidance RCRA Air Emission Standards for Process Vents and Equipment Leaks, EPA-450/3-89-021 (July 1990) at pages 2-3: "Air standards have been promulgated for the control of air emissions from permitted hazardous waste incinerators. 40 CFR Part 264, Subpart O. These standards require that incinerators burning hazardous waste be operated to achieve a destruction and removal efficiency (DRE) of at least 99.99 percent for those

primary organic hazardous constituents listed in the facility permit However, the process vent stream (i.e. gases and vapors) from a hazardous waste management unit would not be classified as a hazardous wastes. Noncontainerized gases emitted from hazardous wastes are not themselves hazardous wastes because the RCRA statute implicitly excludes them. Therefore combustion of process vent streams in an incinerator is not subject to the 99.99 DRE requirement."

- Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF): Background Information for Promulgated Organic Air Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, EPA/453/R-94/076b (November 1994) (since organic vapors emitted from hazardous waste are not solid or hazardous waste, control devices installed to comply with Subpart CC organic vapor control requirements are not hazardous waste management units and do not require RCRA permits).

ED_002427B_00006857-00009

ATTACHMENT "B"

United States Environmental Protection Agency

Office of Air Quality Planning and Standards Research Triangle Park NC 27711

EPA-450/3-89-021
July 1990

Air

EPA

Hazardous Waste TSDF - Technical Guidance Document for RCRA Air Emission Standards for Process Vents and Equipment Leaks

RCRA

The standards for process vents contain requirements that specific control-device operating parameters be monitored continuously (Sections 264.1034 and 265.1034) and the monitoring information be recorded in the facility operating record to ensure that the devices perform according to their design and are properly operated and maintained. Operating parameters are specified for condensers, carbon adsorbers, flares, incinerators, and other enclosed combustion devices. While minimum operating conditions are identified for organic vapor destruction devices (e.g., incinerators and flares) to ensure 95 percent destruction, values or ranges of values for recovery device (i.e., condensers and carbon adsorbers) operating parameters cannot be specified on an industry-wide basis. A recovery device must be designed for a particular application and monitored to ensure that it is being operated within design specifications. (Note: This is an important point for permit writers/reviewers to keep in mind when evaluating control device efficiencies.) Proper design shall be determined through and documented by engineering calculations, vendor certification, and/or emission testing, although the use of emission testing to determine compliance with efficiency requirements is expected to occur only rarely. For facilities with final RCRA permits, periods when monitoring data indicate that control device operating parameters exceed established tolerances for design specifications for more than 24 hours must be reported on a semiannual basis. The records and reports must include dates, duration, cause, and corrective measures taken. (Note: Air standards also have been promulgated for the control of air emissions from permitted hazardous waste incinerators (40 CFR 264, Subpart O). These standards require that incinerators burning hazardous waste be operated to achieve a destruction and removal efficiency (DRE) of at least 99.99 percent for those primary organic hazardous constituents listed in the facility permit. However, the process vent stream (i.e., gases and vapors) from a hazardous waste management unit would not be classified as a hazardous waste. Noncontainerized gases emitted from hazardous wastes are not themselves hazardous wastes because the RCRA statute implicitly excludes them. Therefore, combustion of process vent streams in an incinerator is not subject to the 99.99 DRE requirement.)

ED_002427B_00006857-00012

ATTACHMENT "C"

EPA United States Environmental Protection Agency

National Service Center for Environmental Publications (NSCEP)

Document Display

Title:
Advanced RCRA Inspector's Institute
Document 1 of 1

Save A Copy for Later

Page 1 (1 of 660) : 1 - 2 - 3 - 4 - 5 - 6 - 7 - 8 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 17 - 18 - 19 - 20 - next

Pages per View

GET A COPY

Search in document

Include current hits (2) -> uncontained gas

The Advaced RCRA Inspector's Institute

The Advanced RCRA Inspector's Institute

Swissotel Boston
December 13 - 17, 1993

Monday 12/13	1:30 - 2:30	Welcome and an Introduction
	2:45 - 4:30	Exploring Inspection Paradigms
Tuesday 12/14	8:30 - 9:45	Waste Minimization/Pollution Prevention Part 1
	10:00- 11:30	WMIN/PP Part 2
	12:30 - 1:30	Concurrent Sessions: BIF/Combustion Inspections
		Air Emissions (AA/BB)
	1:45 - 3:00	(Cont'd)
	3:15 - 4:30	(Cont'd)
Wednesday 12/15	8:30 - 9:30	Enforcement Initiatives Part 1
	9:45 - 10:15	Initiatives Part 2
	10:30 - 12:00	Import Export Inspections
	1:00 - 2:15	RCRA Interface with Other Laws
	2:30 - 3:45	Multimedia Inspections Part 1
	4:00 - 4:45	MM Part 2
Thursday 12/16	8:30 - 9:30	New Waste Issues
	9:45 - 10:45	Gray Areas In the Definition of Solid Waste Part 1
	11:00 - 12:00	Gray Areas Part 2
	1:00 - 2:00	Enforcement Case Development Part 1
	2:15 - 3:15	Enf. Case Development Part 2
	3:30 - 4:30	RCRA Civil Penalty Policy
Friday 12/17	8:30 - 10:00	Federal Facilities Enforcement
	(10:00 - 10:30)	(Extended break for check-out)
	10:30 - 11:30	Inspection Paradigms Revisited
	11:30 - 12:00	Complete evaluations and collect certificates

(Some time may also be made available throughout the course for individual's to address the specific questions or ideas to all participants)

U.S. EPA Headquarters Library
Mail code ~~8201~~ 3404T
1200 Pennsylvania Avenue NW
Washington DC 20460

Please help us improve this service. If you find a document that has a defect (page missing, rotated, clipped, etc.), use the reporting mechanism (on the tool bar above) to report the problem...

EPA United States Environmental Protection Agency

National Service Center for Environmental Publications (NSCEP)

Document Display

Title:
Advanced RCRA Inspector's Institute
Document 1 of 1

Save A Copy for Later

Page 77 (1 of 660) : previous - 61 - 62 - 63 - 64 - 65 - 66 - 67 - 68 - 69 - 70 - 71 - 72 - 73 - 74 - 75 - 76 - 77 - 78 - 79 - 80 - next

Pages per View

GET A COPY

Search in document

Include current hits (2) -> uncontained gas

United States Environmental Protection Agency | Office of Solid Waste and Emergency Response | November 1992

EPA

RCRA/Clean Air Act Interface

A Quick Reference Fact Sheet

Background

RCRA and the Clean Air Act (CAA) both have regulatory programs to address emissions onto the environment. The CAA comprises a series of interlocking programs designed to protect health and the public welfare from emissions polluting the ambient (outdoor) air.

The 1990 amendments to CAA contain several innovative approaches to air regulation. The Act is subdivided into a number of titles including provisions for attainment and maintenance of National Ambient Air Quality Standards (NAAQS), mobile sources, air toxics, acid rain control, permits, ozone protection, enforcement and other miscellaneous provisions.

Potential Issues

The following examples highlight RCRA regulations that interface with CAA.

Chlorofluorocarbon (CFC) Reclamation Exclusion — The CAA requires that all ozone depleting emissions from all kinds of refrigeration be reduced to the lowest level possible through recycling, recovery, and other controls. Specifically, Title VI of CAA prohibits venting during servicing and disposal of refrigerants after July 1, 1992. To be consistent with Title VI, and because CFC refrigerants would display the toxicity characteristic under RCRA, used CFC refrigerants from totally enclosed heat transfer equipment, provided the refrigerant is reclaimed for further use — is not subject to regulation as a hazardous waste (§261.4 (b)(12)). Additionally, to qualify for the exclusion, the persons performing the reclamation activities and the equipment they use must be certified under CAA.

This exclusion is only applicable to the actual CFC refrigerant, any oils or other waste removed from the equipment is subject to hazardous waste determination.

Air Emission Control Devices — Air emission control devices located at RCRA hazardous waste facilities but regulated under CAA, can generate residues that may be defined as a hazardous waste. For example, activated carbon units used as air emission control devices of gaseous industrial process emissions will not necessarily be regulated under RCRA. Trapped organics in such columns are not hazardous waste because the gas being treated is not a solid waste (it is an uncontained gas), and therefore any condensed organics do not derive from treatment of a hazardous waste. However, the non gas residues from these devices could be hazardous wastes if they are listed or if they display a characteristic.

Stationary Sources — The CAA of 1990 includes a list of 189 toxic air pollutants of which emissions must be reduced. EPA must publish a list of source categories that emit certain levels of these pollutants. The list of source categories must include:

- "Major sources" - emitting 10 tons per year of a single air toxic, or 25 tons per year of any combination of these toxics
- "Area Sources" - smaller sources emitting less than 10 tons per year of a single air toxic, or 25 tons per year of any combination of these toxics.

Several types of facilities regulated under RCRA Subtitle C may qualify as "major" or "area" sources of toxic air pollutants subject to CAA. Specific small businesses that may be regulated under both programs include dry cleaners, gasoline stations, printers, auto body repair shops, metal finishers, surface coating and painting operations, and solvent degreasing operations.

Please help us improve this service. If you find a document that has a defect (page missing, rotated, clipped, etc.), use the reporting mechanism (on the tool bar above) to report the

ATTACHMENT "D"

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MAY 13 2011

Mr. Tim Hunt
Senior Director, Air Quality
American Forest and Paper Association
1111 Nineteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hunt:

I would like to thank you and other representatives of forest products industries for meeting with my staff on April 26, 2011, to discuss your concerns with the Identification of Non-Hazardous Secondary Materials That Are Solid Waste (NHSM) final rule. We are evaluating a number of the concerns you raised, but wanted to get back to you quickly on the "contained gas" issue that you raised in that meeting and in an issue paper that you forwarded to us on April 13, 2011. We understand that our response to the fourth comment in Part 3b.I.3. of the document *Responses to Comments Document for the Identification of Non-Hazardous Materials that are Solid Waste* (February 2011) has created concerns among the regulated community that the Environmental Protection Agency (EPA) has changed a long-standing interpretation of what constitutes a "contained gaseous material" for purposes of defining the term "solid waste" under the Resource Conservation and Recovery Act (RCRA). We have not changed our prior interpretation but would like to clarify the response.

EPA was responding to a comment requesting that we include in the NHSM final rule a definition of "contained gaseous material." The Agency does not believe that including such a definition in the rule is necessary. However, our response seems to have caused confusion about whether the Agency was changing its prior interpretations regarding the burning of gaseous materials, for example in fume incinerators, and whether or not such burning is considered to be treatment of a solid waste by burning.

The response does not change any previous EPA positions. We clarify here that the Agency's previous statements and interpretations remain effective. Thus, burning of gaseous material, such as in fume incinerators[1] (as well as other combustion units, including air pollution control devices that may combust gaseous material) does not involve treatment or other management of a solid waste (as defined in RCRA section 1004 (27)).

---

[1] See, for example, 47 FR 27530, June 24, 1982, where it states "Fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA.

We also note that since the Agency did not solicit comment on this issue in the proposal, and did not analyze or address it in the preamble to the final rule or in the Regulatory Impact Analysis (RIA) for the rule, it is clear that the Agency did not intend to issue an interpretation that would change previous EPA statements regarding how "contained gaseous material" is interpreted for purposes of RCRA and for purposes of section 129 of the Clean Air Act.

Thank you for your continued interest in protecting the environment. If you have further questions you may contact George Faison, of my staff, at faison.george@epa.gov or 703-305-7652.

Sincerely,

Suzanne Rudzinski

Suzanne Rudzinski, Director
Office of Resource Conservation and Recovery

ATTACHMENT "E"

9489.1994(01)

CLARIFICATION ON THE DISTINCTION BETWEEN THERMAL DESORBERS AND INCINERATORS

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

February 23, 1994

Mr. David D. Emery
President
Bioremediation Service, Inc.
P.O. Box 2010
Lake Oswego, Oregon 97035-0012

Dear Mr. Emery:

This is in response to your December 21, 1993, letter requesting clarification on the distinction between thermal desorbers and incinerators. In particular, you questioned whether temperature was a criterion for distinguishing between desorbers and incinerators and whether chlordane contaminated soil can be effectively and safely treated by thermal desorption.

Under the Environmental Protection Agency's (EPA's) regulations, thermal treatment units that are enclosed devices using controlled flame combustion and that are neither boilers nor industrial furnaces are classified as incinerators subject to regulation under 40 CFR Part 264, Subpart O. Definitions of boilers, industrial furnaces, and incinerators are established in 40 CFR 260.10. Thermal treatment units that do not use controlled flame combustion and that are not industrial furnaces are classified as "miscellaneous units" subject to regulation under 40 CFR Part 264, Subpart X.

The use of "controlled flame combustion" determines whether EPA regulates a device used for thermal desorption as an incinerator or a "miscellaneous unit". Consequently, a thermal desorber would be subject to regulation as an incinerator if it was equipped with a fired afterburner to destroy desorbed organic compounds, or if the desorption chamber was directly fired, irrespective of how the desorbed organics were controlled. On the other hand, if the desorption chamber was indirectly heated and the desorbed organics were not controlled using controlled flame combustion (e.g., no afterburner), the thermal desorber would be subject to regulation as a "miscellaneous unit". Thus, in response

to your questions, temperature is not a criterion that is used to determine the regulatory status of a thermal desorber.

EPA's regulations for miscellaneous units are not prescriptive given the variety of devices that fall into this category. Rather, the regulations require the permitting official to establish permit conditions that are necessary to protect human health and the environment. For "miscellaneous" thermal treatment units, permit writers will generally require compliance with all of the Subpart O incinerator standards that are appropriate for the technology and then determine if additional controls are needed to ensure that emissions are safe.

Please note that I have described EPA's regulatory classification approach for thermal desorbers. Under the Resource Conservation and Recovery Act, EPA authorizes the States to implement the hazardous waste management regulatory program. State regulations may be more stringent or broader in scope than EPA's. Therefore, you should check with the State in which the facility in question is to be located to identify any applicable standards.

With respect to your question as to whether chlordane contaminated soil can be effectively and safely treated by low temperature desorption, you should contact EPA's technical expert on thermal desorption, Paul de Percin, Office of Research and Development, for assistance. Mr. de Percin can also be consulted about TCDD conjugation but, without full thermodynamic and kinetic data regarding the process involved, it may be difficult to give you any definitive assistance. He can be reached at 513-569-7797.

I hope that this information will be helpful. If you have further questions about the regulatory classification of thermal desorbers, please contact Bob Holloway of my staff at 703-308-8461.

Sincerely,
Michael Shapiro
Director
Office of Solid Waste

cc: Paul de Percin; Bob Holloway

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admits the jurisdictional allegations herein; however, the Respondents neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waives any right to contest the allegations and their right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

ED_002427B_00006869-00002

11. The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. "Owner" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

13. "Operator" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

15. "Facility" is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA I.D. No. TSD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

19. The Respondent USET has an oil reclamation unit located on the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30) three mix tanks (T-31, T-32, and T-33), a centrifuge, and a surge tank (T-34) at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Processing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment),[1] storage, or disposal of hazardous waste.

24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

ED_002427B_00006869-00004

25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

28. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

30. On various dates between June 15, 2008 and the present, certain hazardous wastes were processed in the tanks identified in Paragraph 20.

31. The hazardous waste identified in Paragraph 30 did not meet the definition of "recyclable materials" as that term is defined in 40 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]

because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

32. The exemption for recyclable materials in 30 T.A.C. §335.24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraphs 30 - 31.

33. The Respondents "processed" (treated) hazardous waste as that term is defined in 30 T.A.C. § 335.1(117) (40 C.F.R. § 260.10) in the tanks identified in Paragraph 20.

34. To date, neither the Respondent USET or Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste in the tanks identified in Paragraph 20.

35. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by processing (treating) hazardous waste without a permit.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

36. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

37. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

38. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

39. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

40. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

41. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

42. On various dates between June 15, 2008 and the present, certain hazardous wastes were fed into the TDU that did not meet the definition of "recyclable materials" as that term is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

43. The exemption for recyclable materials in 30 T.A.C. §335.24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 42.

44. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

45. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the

> treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

46. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants and to remove them from the hazardous waste feed material, and transfers them to a gas treatment system using a nitrogen carrier gas. The oil is then recovered by condensing it in the gas treatment system. The vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, and burned.

47. The separation of the organic contaminants from the hazardous waste in the TDU's indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

48. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

49. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a permit.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

50. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

51. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

52. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

53. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in

accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

54. The burning of gases in the TDU's combustion chamber constitutes thermal processing (thermal treatment), as term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

55. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as "any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

56. The TDU is an enclosed device that uses controlled flame combustion.

57. The TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

58. The TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] because it thermally processes (thermally treats) hazardous waste by burning hazardous waste using controlled flame combustion.

59. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

60. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste in an unpermitted incinerator.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

61. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

62. Between on or about March 9, 2010 and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

63. The roll-off boxes identified in Paragraph 62 contained material which was destined for the TDU.

64. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

65. The roll-off boxes identified in Paragraph 62 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

66. To date, the Respondent USET has not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y".

67. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

ED_002427B_00006869-00011

III. COMPLIANCE ORDER

68. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

1. As of the effective date of this CAFO, feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution

4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", and that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility.

3. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ for approval, interim limits on operating parameters, including, but not limited, to the following:

a. maximum hazardous waste feed rate to the rotary dryer;

b. limits on ash, semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic) (Cl_2 and HCl);

c. minimum rotary dryer temperature;

d. maximum gas/vapor flow rate to the Off-Gas Condensing Recovery System;

e. maximum Off-Gas Condensing Recovery System outlet temperature;

f. minimum combustion chamber temperature;

g. maximum gas/vapor flow rate to the combustion chamber;

h. other Off-Gas Condensing Recovery Systems operating parameter limits; and

i. any other operating parameter limits for air pollution control devices used.

The submittal shall include monitoring and recordkeeping requirements. The Respondents shall implement the operating parameter limits as approved or modified by EPA and TCEQ.

4. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).

5. Within ninety (90) days of the effective date of this CAFO, the Respondents shall reconfigure the TDU so that the non-condensable vent gases are routed to a thermal oxidizer unit (TOU) instead of the combustion chamber of the TDU. After the reconfiguration has occurred, for the purposes of Section III and IV.C of this CAFO only, references to the TDU shall include the TOU, unless otherwise indicated.

6. Within ninety (90) days of the effective date of this CAFO, the Respondent shall also submit to EPA and TCEQ for approval, interim operating parameters for the TOU including, but not limited to:

a. minimum temperature of the TOU combustion chamber; and

b. maximum flue gas flow rate.

The Respondents shall implement the operating parameter limits as approved or modified by EPA and TCEQ.

7. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 63.1209. The Respondents shall use carbon monoxide and hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen. These CEMS shall be

located in compliance with 40 C.F.R. Part 60, Appendix B requirements for rotary dryer emission point (EP-1), the combustion chamber emission point (EP-2), and the TOU. The Respondents shall operate the TDU and the TOU in a manner that the one minute and hourly rolling averages are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(a).

8. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ for approval, a feedstream analysis plan prepared in accordance with 40 C.F.R. § 63.1209(c)(2). The Respondents shall implement the plan as approved or modified by EPA and TCEQ.

9. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA, with a copy to TCEQ. The Report shall include the following:

a. Identify the customer, the customer's SIC and NAICS code, copies of the relevant waste approval documents, and manifests for the previous six month period.

b. All time periods in where there were exceedances of the one minute and hourly rolling averages required under Paragraph 68.A.7.

c. The initial Report shall include documentation showing the installation dates of the equipment required by Paragraphs 68.A.4, A5, and A.7.

The Report may be submitted in an electronic format (i.e., compact disk). The Respondent may claim the report as confidential business information, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within ninety (90) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA, an application for a Class 3 RCRA Permit Modification to permit the TDU as a miscellaneous unit under 40 C.F.R. Part 264, Subpart X in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33). This permit application will serve as the Documentation of Compliance required by 40 C.F.R. § 63.1211(c).

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU, the TOU, and the oil reclamation unit, including an engineering report, waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351).

3. The Respondents shall also request that the final RCRA permit also include the following:

a. The relevant requirements of 40 C.F.R. Part 63, Subparts A and EEE;

b. The feedstock limitations set forth in Paragraph 68.F;

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers; and

d. Any risk-based terms and conditions necessary to protect human health and the environment.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ and EPA within the deadline set forth in Paragraph 68.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date.

5. By no later than two and one-half years (30 months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and have a final RCRA Subpart X permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33), and which incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE. In the event that TCEQ does not issue a final RCRA Subpart X permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

C. Notice of Intent to Comply (NIC)/Public Participation

1. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b), and an initial notification pursuant to 40 C.F.R. § 63.9(b).

2. The Respondents shall make the draft NIC available to the public either (a) at least thirty (30) days prior to the public meeting pursuant to 40 C.F.R. § 63.1210(b)(2), or (b) at a time approved by EPA and TCEQ.

ED_002427B_00006869-00017

3. The Respondents shall provide the following notices to the public:

a. Notice of Receipt of Application and Intent to Obtain Permit pursuant to 30 T.A.C. §§ 39.418 and 39.509. Notice of the public meeting required by 30 T.A.C. § 305.69(d)(4) shall be included with the Notice of Receipt of Application and Intent to Obtain Permit, as required by 30 T.A.C. § 39.418;

b. Notice to the public of the Notice of Application and Preliminary Decision pursuant to 30 T.A.C. §§ 39.419 and 39.509; and

c. NIC public meeting required by 40 C.F.R. § 63.1210(c)(3).

4. The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d)(4) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) day comment period. This public meeting shall also be coordinated with the NIC public meeting required by 40 C.F.R. § 63.1210(c).

5. The Respondents shall submit to TCEQ and EPA the final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.

6. The failure to timely submit the final NIC to TCEQ and EPA no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.

D. Startup, Shutdown, and Malfunction Plan

1. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and 63.1206(c)(2). The Respondents shall comply with any instructions or directives from TCEQ regarding approval,

disapproval, or submission of any additional information. A copy of the Startup, Shutdown, and Malfunction Plan shall also be submitted to EPA.

E. Comprehensive Performance Test (CPT)

1. The Respondents shall perform a comprehensive performance test (CPT) as set forth below. The CPT is required to demonstrate compliance with the emissions standards of 40 C.F.R. Part 63, Subpart EEE, establish limits for the operating parameters provided by 40 C.F.R. § 61.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA for approval a complete and approvable comprehensive performance test (CPT) plan and a continuous monitoring system (CMS) performance test plan pursuant to the requirements of 40 C.F.R. §§ 63.7, 63.1207, and 63.1209. The CPT plan shall also provide for a performance test to determine the efficiency and operating parameters of the condensers from the Off-Gas Condensing Recovery System, the capture efficiency, destruction and removal efficiency, and the actual nature, pattern, and quantity of emissions from EPN EP-2, the TOU, and any other fugitive or point source emissions of the TDU system capable of routing off-gas from the TDU to the atmosphere, including its air contaminant control systems, product recovery systems, and treated material handling system.

3. The Respondents shall make the CPT plan and CMS performance test plan available for public review upon issuance of the notice of NIC public meeting.

4. The Respondents shall implement the CPT Plan and the CMS performance test plan as approved by TCEQ and EPA, within ninety (90) days after approval of the CPT Plan and the

CMS performance test plan. During the testing, the Respondents shall comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).

5. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations) that they have exceeded any emission standard for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except as provided in 40 C.F.R. § 63.1207(*l*)(1). The Respondents must make this determination within forty-five (45) days following completion of the CPT. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

6. All analyses required by the CPT plan shall be performed by a NELAC accredited laboratory or by a laboratory pre-approved by TCEQ.

7. Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), within ninety (90) days from completion of the CPT and the CMS performance test, the Respondents shall submit a Notification of Compliance (NOC) to TCEQ and EPA documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under 40 C.F.R. § 63.1209. All data collected during the CPT and the CMS performance test (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to TCEQ and EPA along with the NOC.

8. As of the date of the submission of the NOC, the Respondent shall comply with all operating requirements of the NOC, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219.

9. The failure to timely submit an NOC to TCEQ and EPA within ninety (90) days from completion of the CPT and the CMS performance test shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

F. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas

4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", and that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in its Final RCRA permit.

G. Submission, Revision, and Approval Process

1. For all applications or plans required be submitted to TCEQ and/or EPA approval under this CAFO, TCEQ/EPA will review these applications or plans and issue only one Notice of Deficiency (NOD) to the Respondents in accordance with 30 T.A.C. §§ 281.3(c) and 281.19(a). The Respondents must provide an approvable response to TCEQ and EPA within thirty (30) days of receipt of the NOD. In the event that the Respondents fail to submit a timely and good-faith approvable NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline [thirty (30) days from the date of receipt of the NOD].

H. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33), and which incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE.

2. The Respondents may seek relief under the provisions of Section IV.F of the CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

I. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925(c)(3), 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subparts A and EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R.

§ 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.E of this CAFO.

J. Submissions

In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

69. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

70. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire

transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the

CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

71. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

72. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

ED_002427B_00006869-00026

73. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

74. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. ADDITIONAL REQUIREMENTS

75. The Respondents shall undertake the following additional requirements:

A. The Respondents agree that the oil reclamation unit and the TDU are subject to the requirements of 40 C.F.R. Part 61, Subparts V and FF.

B. Within thirty (30) days of the effective date of the CAFO, the Respondents shall identify the following equipment in the oil reclamation unit and the TDU that is in "volatile hazardous air pollutant" (VHAP) service, as that term is defined by 40 C.F.R. § 61.241:

1. pumps;
2. compressors;
3. pressure relief devices;

4. sampling connection systems;

5. open-ended valves or lines;

6. valves;

7. connectors;

8. surge control vessels;

9. bottoms receivers; and

10. control devices and systems.

The Respondents shall assume all the equipment is in VHAP service unless otherwise demonstrated in accordance with the requirements of 261.245(d).

C. Within ninety (90) days of the effective date of the CAFO, the Respondents shall implement a fugitive monitoring program in accordance with the requirements of 40 C.F.R. Part 61, Subpart V.

D. Within ninety (90) days of the effective date of the CAFO, the Respondent shall submit the notice required by 40 C.F.R. § 61.247(a) to TCEQ.

E. Pursuant to 40 C.F.R. § 61.343(a)(1), within ninety (90) days of the effective date of the CAFO, the Respondents shall install, operate, and maintain a fixed roof and closed-vent system that routes all organic vapors from the following tanks set forth below to a control device:

1. Shaker Tank (T-30);

2. Surge Tank (T-34);

3. Condensate Water Tanks (T-3A, T3-B);

4. T-10 Series Tanks (T-10, T-11, T-12, T-13);

5. T-30 Series Tanks (T-31, T-32, T-33);

6. Filtrate Mix Tank (T-5);

7. Filtrate Tank (T-6);

8. Filtrate Skim Tank (T-6A);

9. Waste Water Tanks (M3, M6, S1,S2); and

10. Centrifuge.

The fixed-roofs shall meet the requirements of 40 C.F.R. § 61.343(a)(1)(i), and the control devices shall be designed and operated in accordance with the requirements of 40 C.F.R. § 61.349. The emissions from the tanks shall be routed to a carbon adsorption system when the TOU is not operating or out of service. The carbon in the carbon adsorption systems used as control device shall be replaced immediately when carbon breakthrough is indicated. The devices shall be monitored on a daily basis when emissions are routed to the device, as required by 40 C.F.R. § 61.354(d).

F. Pursuant to 40 C.F.R. § 61.354(c), within ninety (90) days of the effective date of this CAFO, the Respondents shall install, calibrate, maintain, and operate according to manufacturer's specifications, devices to continuously monitor the control devices operations required by 40 C.F.R. § 61.349.

G. Pursuant to 40 C.F.R. § 61.345(a), within ninety (90) days of the effective date of the CAFO, the Respondents shall install, operate and maintain covers on Bins 1, 2, 3, 4, and the Centrifuge solid bins that meet the requirements of 40 C.F.R. § 61.345(a)(1). The cover and openings shall be closed and secured at all time except for waste loading, removal, inspection or sampling, as required by 40 C.F.R. § 61.345(a)(1)(ii).

H. The Respondents shall use a submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

I. Within ninety (90) days of the effective date of the CAFO, the Respondents shall conduct performance tests for the TOU and the carbon adsorption system to demonstrate compliance with the requirements of 40 C.F.R. § 61.349. The performance tests shall be conducted in accordance with the requirements of 40 C.F.R. § 61.355.

J. Within six (6) months of the effective date of the CAFO, the Respondent shall submit a written report to EPA. The Report shall include the following:

1. A copy of the equipment list required by Paragraph 75.B;

2. A copy of the fugitive emission program required by Paragraph 75.C;

3. A copy of the notice required by Paragraph 75.D;

4. Documentation showing compliance with Paragraphs 75.E, 75.F, 75.G, and 75.H. This includes documentation that the control devices meet the requirements set forth in 40 C.F.R. § 61.349(a)(2); and

5. A copy of the performance tests required by Paragraph 75.I.

K. The report must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

L. The Report shall be sent to the following:

Craig Lutz
Toxics Enforcement Section (6EN-AT)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

D. STIPULATED PENALTIES

76. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 68.A.3, 68.A.6, 68.A.8, 68.A.9, 68.C.1, 68.C.5, 68.D.1, and 68.E.2

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Certain Interim Operating Requirements – Paragraphs 68.A.4, 68.A.5, and 68.A.7

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

d. Failure to Comply with Additional Requirements – Section IV.C

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

77. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 70 herein. Interest and late charges shall be paid as stated in Paragraphs 72 - 73 herein.

78. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

E. DISPUTE RESOLUTION

79. If the Respondents object to any decision or directive of EPA in regard to Section III or IV.C, the Respondents shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

80. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the

ED_002427B_00006869-00032

agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

81. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

82. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

F. FORCE MAJEURE

83. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO.

84. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents' first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.F of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondent from asserting any claim of force majeure.

85. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.G of this CAFO.

86. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event

ED_002427B_00006869-00034

caused any delay the Respondents' claim was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event.

G. NOTIFICATION

87. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P. :

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

ED_002427B_00006869-00035

Texas Commission on Environmental Quality

Section Manager
Industrial and Hazardous Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

H. MODIFICATION

88. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

I. RETENTION OF ENFORCEMENT RIGHTS

89. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

90. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

91. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the United

ED_002427B_00006869-00036

States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

92. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents 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 Complainant or 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 this CAFO.

93. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant, does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

J. INDEMNIFICATION OF EPA

94. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States

ED_002427B_00006869-00037

Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

K. COSTS

95. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondents specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

L. TERMINATION

96. At such time as the Respondents believe they have completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

M. EFFECTIVE DATE

97. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

ED_002427B_00006869-00038

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____

TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

ED_002427B_00006869-00042

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copies of the CAFO were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

ED_002427B_00006869-00043

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admits the jurisdictional allegations herein; however, the Respondents neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waives any right to contest the allegations and their~~its~~ right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

ED_002427B_00006870-00002

11. The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. "Owner" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

13. "Operator" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

15. "Facility" is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA I.D. No. TSD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

19. The Respondent USET has an oil reclamation unit located on the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30) three mix tanks (T-31, T-32, and T-33), a centrifuge, and a surge tank (T-34) at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Processing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment),[1] storage, or disposal of hazardous waste.

24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

ED_002427B_00006870-00004

25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

28. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

30. On various dates between June 15, 2008 and the present, certain hazardous wastes were processed in the tanks identified in Paragraph 20.

31. The hazardous waste identified in Paragraph 30 did not meet the definition of "recyclable materials" as that term is defined in 40 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]

because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

32. The exemption for recyclable materials in 30 T.A.C. §335.24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraphs 30 - 31.

33. The Respondents "processed" (treated) hazardous waste as that term is defined in 30 T.A.C. § 335.1(117) (40 C.F.R. § 260.10) in the tanks identified in Paragraph 20.

34. To date, neither the Respondent USET or Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste in the tanks identified in Paragraph 20.

35. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by processing (treating) hazardous waste without a permit.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

36. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

37. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

38. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

39. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

40. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

41. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

42. On various dates between June 15, 2008 and the present, certain hazardous wastes were fed into the TDU that did not meet the definition of "recyclable materials" as that term is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

43. The exemption for recyclable materials in 30 T.A.C. §335.24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 42.

44. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

45. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the

> treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

46. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants and to remove them from the hazardous waste feed material, and transfers them to a gas treatment system using a nitrogen carrier gas. The oil is then recovered by condensing it in the gas treatment system. The vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, and burned.

47. The separation of the organic contaminants from the hazardous waste in the TDU's indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

48. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

49. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a permit.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

50. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

51. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

52. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

53. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means.

> Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

54. The burning of gases in the TDU's combustion chamber constitutes thermal processing (thermal treatment), as term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

55. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as "any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

56. The TDU is an enclosed device that uses controlled flame combustion.

57. The TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

58. The TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] because it thermally processes (thermally treats) hazardous waste by burning hazardous waste using controlled flame combustion.

59. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

60. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and

30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste in an unpermitted incinerator.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

61. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

62. Between on or about March 9, 2010 and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

63. The roll-off boxes identified in Paragraph 62 contained material which was destined for the TDU.

64. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

65. The roll-off boxes identified in Paragraph 62 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

66. To date, the Respondent USET has not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y".

67. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

III. COMPLIANCE ORDER

68. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

1. As of the effective date of this CAFO, feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil

4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", and~~or~~ that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility.

3. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ for approval, interim limits on operating parameters, including, but not limited, to the following:

a. maximum hazardous waste feed rate to the rotary dryer;

b. limits on ash, semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic) (Cl_2 and HCl);

c. minimum rotary dryer temperature;

d. maximum gas/vapor flow rate to the Off-Gas Condensing Recovery System;

e. maximum Off-Gas Condensing Recovery System outlet temperature;

f. minimum combustion chamber temperature;

g. maximum gas/vapor flow rate to the combustion chamber;

h. other Off-Gas Condensing Recovery Systems operating parameter limits; and

i. any other operating parameter limits for air pollution control devices used.

The submittal shall include monitoring and recordkeeping requirements. The Respondents shall implement the operating parameter limits as approved or modified by EPA and TCEQ.

4. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).

65. Within ninety (90) days of the effective date of this CAFO, the Respondents shall reconfigure the TDU so that the non-condensable vent gases are routed to a thermal oxidizer unit (TOU) instead of the combustion chamber of the TDU. After the reconfiguration has occurred, for the purposes of Section III and IV.C of this CAFO only, references to the TDU shall include the TOU, unless otherwise indicated.

6. Within ninety (90) days of the effective date of this CAFO, the Respondent shall also submit to EPA and TCEQ for approval, interim operating parameters for the TOU including, but not limited to:

a. minimum temperature of the TOU combustion chamber; and

b. maximum flue gas flow rate.

The Respondents shall implement the operating parameter limits as approved or modified by EPA and TCEQ.

~~5~~76. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 63.1209. The Respondents shall use ~~a~~ carbon monoxide and ~~a~~ hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use ~~an~~ oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen. These CEMS shall be located in compliance with 40 C.F.R. Part 60, Appendix B requirements for rotary dryer emission point (EP-1), ~~and~~ the combustion chamber emission point (EP-2), and the TOU. The Respondents shall operate the TDU and the TOU in a manner that the one minute and hourly rolling averages are not exceeded. The rolling averages shall be calculated in accordance with

40 C.F.R. § 63.1209(a).

~~68~~7. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ for approval, a feedstream analysis plan prepared in accordance with 40 C.F.R. § 63.1209(c)(2). The Respondents shall implement the plan as approved or modified by EPA and TCEQ.

~~79~~8. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA, with a copy to TCEQ. The Report shall include the following:

a. Identify the customer, the customer's SIC and NAICS code, copies of the relevant waste approval documents, and manifests for the previous six month period.

b. All time periods in where there were exceedances of the one minute and hourly rolling averages required under Paragraph 68.A.~~5~~76.

c. The initial Report shall include documentation showing the installation dates of the equipment required by Paragraphs 68.A.4, A ~~and~~ 5, and A.76.

The Report may be submitted in an electronic format (i.e., compact disk). The Respondent may claim the report as confidential business information, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within ninety (90) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA, an application for a Class 3 RCRA Permit Modification to permit the TDU as a miscellaneous unit ~~n incinerator~~ under 40 C.F.R. Part 264, Subpart ~~O~~X in accordance with 30 T.A.C. § 335.152(a)(1~~3~~6)
(40 C.F.R. Part 264, Subpart ~~O~~X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33). ~~, the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005.~~ This permit application will serve as the Documentation of Compliance required by
40 C.F.R. § 63.1211(c).

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU, the TOU, and the oil reclamation unit, including an engineering report, ~~the~~ waste analysis, monitoring and inspection requirements, and closure requirements set forth in

30 T.A.C. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351).

3. The Respondents shall also request that the final RCRA permit also include the following:

a. The relevant requirements of 40 C.F.R. Part 63, Subparts A and EEE;

b. The feedstock limitations set forth in Paragraph 68.~~G~~F;

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers; and

d. Any risk-based terms and conditions necessary to protect human health and the environment ~~in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities~~.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ and EPA within the deadline set forth in Paragraph 68.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date.

5. By no later than two and one-half years (30 months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and have a final RCRA Subpart ~~O~~X permit for the TDU as a Subpart X~~O~~ – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33), and which incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE. In the event that TCEQ ~~and EPA do not~~does not issue a final RCRA Subpart ~~O~~X permit for the TDU as described above by the above

deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.~~E~~F (Force Majeure).

~~6. Upon the issuance of a Clean Air Act Title V permit to the Respondents and incorporation of the requirements of Subpart EEE for the TDU and the oil reclamation unit into the Title V permit, the requirements of Subpart EEE may be removed from the RCRA Permit upon request of the permittee(s).~~

C. Notice of Intent to Comply (NIC)/Public Participation

1. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b), and an initial notification pursuant to 40 C.F.R. § 63.9(b).

2. The Respondents shall make the draft NIC available to the public either (a) at least thirty (30) days prior to the public meeting pursuant to 40 C.F.R. § 63.1210(b)(2)~~,~~, or (b) at a time approved by EPA and TCEQ.

3. The Respondents shall provide the following notices to the public:

a. ~~of a~~ Notice of Receipt of Application and Intent to Obtain Permit ~~permit modification request~~ pursuant to ~~30 T.A.C. § 305.69(d)(4) pursuant to~~ 30 T.A.C. §§ 39.418 and 39.509~~.~~. Notice of the public meeting required by 30 T.A.C. § 305.69(d)(4) shall be included with the Notice of Receipt of Application and Intent to Obtain Permit, as required by 30 T.A.C. § 39.418;

b. Notice to the public of the Notice of Application and Preliminary Decision pursuant to 30 T.A.C. §§ 39.419 and 39.509; and

c. NIC public meeting required by 40 C.F.R. § 63.1210(c)(3).

4. The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d)(4) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) days comment period. ~~The information public meeting will also include information related to the risk burn set forth in Paragraph 68.F below.~~ This public meeting shall also be coordinated with the NIC public meeting required by 40 C.F.R. § 63.1210(c).

5. The Respondents shall submit to TCEQ and EPA the final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.

6. The failure to timely submit the final NIC to TCEQ and EPA no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.

D. Startup, Shutdown, and Malfunction Plan

1. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and 63.1206(c)(2). The Respondents shall comply with any instructions or directives from TCEQ regarding approval, disapproval, or submission of any additional information. A copy of the Startup, Shutdown, and Malfunction Plan shall also be submitted to EPA.

E. Comprehensive Performance Test (CPT)

1. The Respondents shall perform a comprehensive performance test (CPT) as set forth below. The CPT is required to demonstrate compliance with the emissions standards of 40 C.F.R. Part 63, Subpart EEE, establish limits for the operating parameters provided by 40 C.F.R. § 61.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA for approval a complete and approvable comprehensive performance test (CPT) plan and a continuous monitoring system (CMS) performance test plan pursuant to the requirements of 40 C.F.R. §§ 63.7, 63.1207, and 63.1209. The CPT plan shall also provide for a performance test to determine the efficiency and operating parameters of the condensers from the Off-Gas Condensing Recovery System, the capture efficiency, destruction and removal efficiency, and the actual nature, pattern, and quantity of emissions from EPN EP-2, the TOU, and any other fugitive or point source emissions of the TDU system capable of routing off-gas from the TDU to the atmosphere, including its air contaminant control systems, product recovery systems, and treated material handling system.

~~3. The CPT should be integrated with the Risk Burn described below to produce a consistent set of proposed enforceable permit conditions.~~

34. The Respondents shall make the CPT plan and CMS performance test plan available for public review upon issuance of the notice of NIC public meeting.

45. The Respondents shall implement the CPT Plan and the CMS performance test plan as approved by TCEQ and EPA, within ninety (90) days after approval of the CPT Plan and the CMS performance test plan. During the testing, the Respondents shall comply with 40 C.F.R.

§§ 63.7(e) and 63.1207(g).

56. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations) that they have exceeded any emission standard for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except as provided in 40 C.F.R. § 63.1207(*l*)(1). The Respondents must make this determination within forty-five (45) days following completion of the CPT. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.FE (Force Majeure).

67. All analyses required by the CPT plan shall be performed by a NELAC accredited laboratory

or by a laboratory pre-approved by TCEQ.

78. Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), within ninety (90) days from completion of the CPT and the CMS performance test, the Respondents shall submit a Notification of Compliance (NOC) to TCEQ and EPA documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under 40 C.F.R. § 63.1209. All data collected during the CPT and the CMS performance test (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to TCEQ and EPA along with the NOC.

89. As of the date of the submission of the NOC, the Respondent shall comply with all operating requirements of the NOC, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219.

9~~10~~. The failure to timely submit an NOC to TCEQ and EPA within ninety (90) days from completion of the CPT and the CMS performance test shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.~~E~~F (Force Majeure).

~~**F. Risk Burn**~~

~~1. To collect emissions data for evaluation in a site-specific risk assessment, as part of its RCRA permit application for the TDU, within one hundred twenty (120) days of the effective date of this CAFO, the Respondents must prepare and submit to TCEQ and EPA for approval, a risk burn plan in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005.~~

~~2. The risk burn should be integrated with the CPT to produce a consistent set of proposed enforceable permit conditions.~~

~~3. The Respondents shall implement the risk burn plan as approved by TCEQ and EPA within ninety (90) days after approval of the risk burn plan.~~

~~4. All analyses required by the risk burn plan shall be performed by a NELAC laboratory or a laboratory pre-approved by TCEQ.~~

~~5. The risk burn performed by the Respondents shall collect fugitive and stack emissions data and define the operating requirements for the TDU based on control parameters identified in Chapters 4 through 7 of the Risk Burn Guidance for Hazardous Waste Combustion Facilities.~~

~~During the risk burn, the Respondent shall evaluate each of the constituents in Chapters 4 through 7 of Risk Burn Guidance including the dioxins, furans, other organics, metals, particulate matter, hydrogen chloride, and chlorine identified therein.~~

~~6. During the risk burn (or as soon after the burn as is practicable), the Respondents shall make the determinations set forth for the Risk Burn Guidance for Hazardous Waste Combustion Facilities, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities deemed appropriate by the TCEQ. During the risk burn, the Respondent must demonstrate that the emissions from the TDU do not present a risk to human health or the environment.~~

~~7. Within one hundred twenty (120) days after completion of the risk burns, the Respondents must submit to TCEQ and EPA a certification that the risk burns have been carried out in accordance with the approved risk burn plans, and must submit the results of all the determinations by the risk burn plan. The Respondents must also submit a complete and approvable Risk Assessment Report consistent with the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. All data collected during the risk burns must be submitted to TCEQ and EPA along with the certification.~~

~~8. A copy of the risk burn plan shall be made available to the public upon issuance of the notice of public meeting pursuant set forth in Paragraph 68.C.3 above.~~

~~9. The failure to timely submit a risk burn certification and the Risk Assessment Report to TCEQ and EPA within one hundred twenty (120) days from completion of the risk burn shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).~~

~~G~~F. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas

5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", and~~or~~ that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in its Final RCRA permit.

~~H~~G. Submission, Revision, and Approval Process

1. For all applications or plans required be submitted to TCEQ and/or EPA approval under this CAFO, TCEQ/EPA will review these applications or plans and issue only one Notice of Deficiency (NOD) to the Respondents in accordance with 30 T.A.C. §§ 281.3(c) and 281.19(a). The Respondents must provide an approvable response to TCEQ and EPA within thirty (30) days of receipt of the NOD. In the event that the Respondents fail to submit a timely and good-faith approvable NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline [thirty (30) days from the date of receipt of the NOD].

~~I~~H. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart X~~O~~ – Miscellaneous ~~Incinerator~~ Unit in accordance with 30 T.A.C. § 335.152(a)(1~~3~~6) (40 C.F.R. Part 264, Subpart ~~O~~X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33), and which incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE. ~~(unless those provisions have already been incorporated into a Clean Air Act Title V permit) and the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA-R-05-006, September 2005.~~

2. The Respondents may seek relief under the provisions of Section IV.~~E~~F of the CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

J~~I~~. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925(c)(3), 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subparts A and EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional

Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R. § 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.~~D~~E of this CAFO.

~~K~~J. Submissions

In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

69. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____)**.

70. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and

ED_002427B_00006870-00029

RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

71. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

72. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective

date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

73. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

74. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. ADDITIONAL REQUIREMENTS

75. The Respondents shall undertake the following additional requirements:

A. The Respondents agree that the oil reclamation unit and the TDU are subject to the requirements of 40 C.F.R. Part 61, Subparts V and FF.

B. Within thirty (30) days of the effective date of the CAFO, the Respondents shall identify the following equipment in the oil reclamation unit and the TDU that is in "volatile hazardous air pollutant" (VHAP) service, as that term is defined by 40 C.F.R. § 61.241:

1. pumps;

2. compressors;

3. pressure relief devices;

4. sampling connection systems;

5. open-ended valves or lines;

6. valves;

7. connectors;

8. surge control vessels;

9. bottoms receivers; and

10. control devices and systems.

The Respondents shall assume all the equipment is in VHAP service unless otherwise demonstrated in accordance with the requirements of 261.245(d).

C. Within ninety (90) days of the effective date of the CAFO, the Respondents shall implement a fugitive monitoring program in accordance with the requirements of 40 C.F.R. Part 61, Subpart V.

D. Within ninety (90) days of the effective date of the CAFO, the Respondent shall submit the notice required by 40 C.F.R. § 61.247(a) to TCEQ.

E. Pursuant to 40 C.F.R. § 61.343(a)(1), within ninety (90) days of the effective date of the CAFO, the Respondents shall install, operate, and maintain a fixed roof and closed-vent

system that routes all organic vapors from the following tanks set forth below to a control device:

1. Shaker Tank (T-30);

2. Surge Tank (T-34);

3. Condensate Water Tanks (T-3A, T3-B);

4. T-10 Series Tanks (T-10, T-11, T-12, T-13);

5. T-30 Series Tanks (T-31, T-32, T-33);

6. Filtrate Mix Tank (T-5);

7. Filtrate Tank (T-6);

8. Filtrate Skim Tank (T-6A);

9. Waste Water Tanks (M3, M6, S1,S2); and

10. Centrifuge.

The fixed-roofs shall meet the requirements of 40 C.F.R. § 61.343(a)(1)(i), and the control devices shall be designed and operated in accordance with the requirements of 40 C.F.R. § 61.349. The emissions from the tanks shall be routed to a carbon adsorption system when the TOU is not operating or out of service. The carbon in the carbon adsorption systems used as control device shall be replaced immediately when carbon breakthrough is indicated. The devices shall be monitored on a daily basis when emissions are routed to the device, as required by 40 C.F.R. § 61.354(d).

F. Pursuant to 40 C.F.R. § 61.354(c), within ninety (90) days of the effective date of this CAFO, -the Respondents shall install, calibrate, maintain, and operate according to manufacturer's specifications, devices to continuously monitor the control devices operations required by 40 C.F.R. § 61.349.

G. Pursuant to 40 C.F.R. § 61.345(a), within ninety (90) days of the effective date of the CAFO, the Respondents shall install, operate and maintain covers on Bins 1, 2, 3, 4, and the Centrifuge solid bins that meet the requirements of 40 C.F.R. § 61.345(a)(1). The cover and openings shall be closed and secured at all time except for waste loading, removal, inspection or sampling, as required by 40 C.F.R. § 61.345(a)(1)(ii).

H. The Respondents shall use a submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

I. Within ninety (90) days of the effective date of the CAFO, the Respondents shall conduct performance tests for the TOU and the carbon adsorption system to demonstrate compliance with the requirements of 40 C.F.R. § 61.349. The performance tests shall be conducted in accordance with the requirements of 40 C.F.R. § 61.355.

J. Within six (6) months of the effective date of the CAFO, the Respondent shall submit a written report to EPA. The Report shall include the following:

1. A copy of the equipment list required by Paragraph 75.B;

2. A copy of the fugitive emission program required by Paragraph 75.C;

3. A copy of the notice required by Paragraph 75.D;

4. Documentation showing compliance with Paragraphs 75.E, 75.F, 75.G, and 75.H. This includes documentation that the control devices meet the requirements set forth in 40 C.F.R. § 61.349(a)(2); and

5. A copy of the performance tests required by Paragraph 75.I.

K. The report must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

L. The Report shall be sent to the following:

Craig Lutz
Toxics Enforcement Section (6EN-AT)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

D~~C~~. STIPULATED PENALTIES

7~~5~~6. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 68.A.3, 68.A.~~6~~6~~7~~, 68.A.~~7~~8, 68.A.9, 68.C.1, 68.C.5, 68.D.1, and 68.E.2~~, and 68.F.1~~

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Certain Interim Operating Requirements – Paragraphs 68.A.4, ~~and~~ 68.A.5, and 68.A.76

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

d. Failure to Comply with Additional Requirements – Section IV.C

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

767. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 70 herein. Interest and late charges shall be paid as stated in Paragraphs 72 - 73 herein.

778. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

DE. DISPUTE RESOLUTION

798. If the Respondents object to any decision or directive of EPA in regard to Section III or IV.C, the Respondents shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

7980. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

801. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

812. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

EE. FORCE MAJEURE

823. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO.

83~~3~~4. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents' first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.F of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondent from asserting any claim of force majeure.

84~~5~~. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.G of this CAFO.

85~~6~~. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event

caused any delay the Respondents' claim was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event.

~~F~~G. NOTIFICATION

8~~7~~6. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P. :

J.D. Head
Fritz, Byrne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

ED_002427B_00006870-00040

Texas Commission on Environmental Quality

Section Manager
Industrial and Hazardous Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

~~G~~H. MODIFICATION

8~~7~~8. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

~~H~~I. RETENTION OF ENFORCEMENT RIGHTS

8~~8~~9. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

8~~9~~90. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

901. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

912. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents 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 Complainant or 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 this CAFO.

923. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant, does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

II. INDEMNIFICATION OF EPA

934. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their

officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

~~J~~K. COSTS

9~~5~~4. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondents specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

~~K~~L. TERMINATION

9~~5~~6. At such time as the Respondents believe they have completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

~~L~~M. EFFECTIVE DATE

9~~6~~7. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____

_____
TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copies of the CAFO were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.

600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

ED_002427B_00006870-00048

CONFIDENTIAL SETTLEMENT COMMUNICATION

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. CAA-06-2013-3336 and CAA-06-2013-3337
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For the purposes of this proceeding, the Respondents admit the jurisdictional allegations contained herein; however, the Respondents neither admit nor deny the specific factual allegations contained in this CAFO.

3. The Respondents explicitly waive any right to contest the allegations and their right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

5. The Respondents consent to the issuance of the CAFO hereinafter recited and payment of the civil penalty in the amount and by the method set forth in this CAFO.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

6. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

7. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

8. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e) as meaning "an individual, corporation, partnership, association, State, municipality, politicial subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

9. The Respondent USET is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

10. The Respondent TD*X is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

11. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Road 69, Robstown, TX 78380, EPA I.D. No. TXD069452340, Permit No. HW-50052-001. The facility includes two stabilization buildings (STAB2 – Permit No. 90163 and STAB3 – Permit No. 92320), and an oil reclamation unit.

ED_002427B_00007084-00002

12. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30), three mix tanks (T-31, T-32, and T-33), a centrifuge, a surge tank (T-34), and three containers at the oil reclamation unit.

13. "Stationary source" is defined in Section 302(z) of the CAA, 42 U.S.C. § 7603(z), and 40 C.F.R. § 70.2 as "any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act."

14. The facility identified in Paragraph 11 is a "stationary source" as that term is defined in Section 302(z) of the CAA, 42 U.S.C. § 7603(z), and 40 C.F.R. § 70.2.

15. "Major Source" is defined in Section 501(2) of the CAA, 42 U.S.C. § 7661(2), and 40 C.F.R. § 70.2 as including any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit 25 tons or more of any combination of hazardous air pollutants.

16. The facility identified in Paragraph 11 emits or has the potential to emit 25 tons or more of any combination of hazardous air pollutants.

17. The facility identified in Paragraph 11 is a "major source" as that term is defined in Section 510(2) of the CAA, 42 U.S.C. § 7661(a) and 40 C.F.R. § 70.2.

18. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

19. 40 C.F.R. § 61.340(b) provides that the provisions of 40 C.F.R. Part 61, Subpart FF applies to owners and operators of hazardous waste treatment, storage, and disposal facilities that treat, store, or dispose of hazardous waste generated by chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. The waste streams at hazardous waste treatment, storage, and disposal facilities are the benzene containing hazardous waste from chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. A

hazardous waste treatment, storage, and disposal facility is a facility that must obtain a hazardous waste management permit under subtitle C of the Solid Waste Disposal Act.

20. On various dates after June 15, 2008, the Respondent USET received benzene-containing hazardous wastes subject to the requirements of 40 C.F.R. Part 61, Subpart FF from off-site generators.

21. The benzene-containing hazardous wastes are transferred to the Respondent TD*X by the Respondent USET.

22. The facility identified in Paragraph 11 is subject to the requirements of 40 C.F.R. Part 61, Subpart FF.

23. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit were inspected by representatives of EPA pursuant to Section 3007 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6927, and Section 114 of the CAA, 42 U.S.C. § 7414.

B. VIOLATIONS

Count One – Operating Without a Title V Permit

24. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a) and 40 C.F.R. § 70.1(b) provides that it is unlawful for any person to operate a major source without a Title V permit.

25. From on or about June 15, 2008 to the present, the facility emits or has the potential to emit 25 tons or more of any combination of hazardous air pollutants.

26. From June 15, 2008 to the present, the Respondent USET failed to have a Title V permit for the facility.

27. Therefore, the Respondent USET violated Section 502(a) of the CAA, 42 U.S.C. § 7661a(a) and 40 C.F.R. § 70.1(b) by operating the facility without a Title V permit.

ED_002427B_00007084-00004

Count Two – Failing to Control Emissions from Tanks With a Closed Vest System and Control Device

28. 40 C.F.R. § 61.343(a)(1) provides that the owner or operator shall, for each tank in which benzene-containing hazardous waste is place, install, operate, and maintain a fixed-roof and closed-vent system that routes all organic vapors vented from the tank to a control device.

29. The tanks identified in Paragraph 12 are subject to the requirements of 40 C.F.R. § 61.343.

30. From on or about June 15, 2008 to February 2012, the Respondents failed to operate a control device at all times that benzene-containing hazardous waste was placed in the tans identified in Paragraph 11.

31. Therefore, the Respondents violated 40 C.F.R. § 61.343(a)(1) by failing to operate a control device at all times that benzene-containing hazardous waste was placed in tanks.

Count Three – Failure to Maintain a Cover on Containers that Handle, Transfer, or Store Benzene-Containing Hazardous Waste

32. 40 C.F.R. § 61.345(a)(1)(ii) provides that the owner or operator shall install, operate, and maintain a cover on each container used to handle, transfer, or store waste. Each opening shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasket and latched) at all time that waste is in the container except when necessary to use the opening for waste loading, removal, inspection, or sampling.

33. The containers identified in Paragraph 12 did not have covers.

34. From on or about June 15, 2008 to April 2, 2013, the Respondents failed to install, operate, and main a cover on the containers identified in Paragraph 12 at all times that the waste was in the container.

35. Therefore, the Respondents violated 40 C.F.R. § 61.345(a)(1)(ii) by failing to install, operate, and main a covers on the containers at all times that the waste was in the container.

Count Four – Failure to Properly Monitor Temperature of TDU

36. 40 C.F.R. § 61.354(c)(4)(ii) provides that the owner or operator subject to the requirements of 40 C.F.R. § 61.349 (closed-vent container and control device) shall install, calibrate, maintain, and operate a temperature sensor, which is to be installed in at a representative location in the combustion chamber.

37. From on or about June 15, 2008 through March 2012, the Respondents used the fire box of TDU as a control device while treating benzene-containing hazardous waste.

38. The fire box did not have a temperature sensor installed in a representative location in the combustion chamber.

39. Therefore, the Respondents violated 40 C.F.R. § 61.354(c)(4)(ii) by having to have a temperature sensor installed in a representative location in the combustion chamber.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

40. For the reasons set forth above, the Respondents has agreed to pay a civil penalty as follows: Respondent U.S. Ecology Texas, Inc. is assessed a civil penalty of _____ **DOLLARS ($)**, and the Respondent TD*X Associates L.P. is assessed a civil penalty of _____ **DOLLARS ($).** The Respondent USET shall pay the assessed civil penalty within thirty (30) days of the effective date of this CAFO. The Respondent TD*X Associates L.P. shall pay the assessed civil penalty in _____ payments as follows:

A.

B.

C.

41. The Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers CAA-06-2013-3336 (Respondent USET) and CAA-06-2013-3337 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and

docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Toxics Enforcement Section (6EN-AT)
Air Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

42. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

43. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's

ED_002427B_00007084-00008

administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

44. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

45. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. ADDITIONAL REQUIREMENTS

46. The Respondent USET shall take the following actions:

A. Within two years~~one year~~ of the effective date of this CAFO, the Respondent USET shall have either a Title V permit for the facility that includes oil reclamation unit, or a federally enforceable new source review (NSR) permit that limits the potential to emit of the facility to 25 tons or less per year of any combination of hazardous air pollutants.

~~B.~~ If the Respondent USET fails to obtain either a Title V permit or an NSR permit~~as set forth in Paragraph 46.A above~~ within ~~one year~~two years of the effective date of this CAFO, the Respondents shall immediately cease operation of the oil reclamation unit, unless that deadline

has been extended pursuant to Section III.F (Force Majeure). The Respondent may seek relief under Section III.F of this CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

B. The Respondent USET shall submit status reports to EPA beginning ninety (90) days after the effective date of this CAFO, and every 90 days thereafter, updating EPA on the status of its permit application. The status report must be accompanied by the following certification:

> "I certify under penalty of law to the best of my knowledge and belief, that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondent by the signature of a person authorized to sign a permit application or report under 40 C.F.R. § 270.11.

D. STIPULATED PENALTIES

47. In addition to any other remedies or sanctions available to EPA, if the Respondent(s) fail or refuse to comply with any provision of Section III.C. of this CAFO, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

48. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 41 herein. Interest and late charges shall be paid as stated in Paragraphs 43 - 44 herein.

49. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

E. DISPUTE RESOLUTION

50. If the Respondents object to any decision or directive of EPA in regard to Section III.C, the Respondents shall notify each other and the following persons in writing of its objections, and the basis for those objections, within thirty (30) calendar days of receipt of EPA's decision or directive:

Associate Director
Air Enforcement Branch (6EN-A)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

51. The Associate Director of the Air Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional thirty (30) calendar days from

EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

52. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 30-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 30-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

53. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section III.H (Modifications).

54. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way, any obligations of the Respondents under this CAFO, 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. If the Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IV.D.

F. FORCE MAJEURE

55. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite the Respondents' best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO, but does include any delays attributable to the TCEQ's permitting process and the conduct of the contested case hearing.

56. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.G of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondents from asserting any claim of force majeure.

57. The Respondent also shall provide notice orally or by electronic or facsimile transmission to the other Respondent not later than 24 hours after the time Respondent first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event, provided that the failure to give such notice shall not limit either Respondent's responsibilities under this CAFO.

58. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section III.H of this CAFO.

59. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event caused any delay the Respondents' claimed was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event. If the Respondents carry this burden, the delay at issue shall be deemed not to be a violation of the affected obligation of this CAFO.

G. NOTIFICATION

60. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Toxics Enforcement Section (6EN-HE)
Air Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P.:

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

~~Texas Commission on Environmental Quality~~

~~Michael De La Cruz, Manager~~
~~Air Enforcement Section~~
~~Texas Commission on Environmental Quality~~
~~P.O. Box 13087 MC 130~~
~~Austin, TX 78711~~

H. MODIFICATION

61. The terms and conditions of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

I. RETENTION OF ENFORCEMENT RIGHTS

62. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

63. Except as herein provided, nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

64. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

65. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents 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 Complainant or 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 this CAFO.

66. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the CAA or with any other provisions of federal, State, or local laws, regulations, or permits.

J. INDEMNIFICATION OF EPA

67. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

ED_002427B_00007084-00017

K. COSTS

68. Each party shall bear its own costs and attorney's fees. Furthermore, each Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

L. TERMINATION

69. At such time as the Respondents believe they have completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

M. EFFECTIVE DATE

70. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

ED_002427B_00007084-00018

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____
TD*X Associates L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 113 of the CAA, 42 U.S.C. § 7413, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right or EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

ED_002427B_00007084-00022

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2013, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that true and correct copies of the CAFO were sent to the following by the method indicated below:

For US Ecology Texas, Inc.

Certified Mail – Return Receipt Requested –

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue, Suite 2100
Austin, Texas 78701

For TD*X Associates LP

Certified Mail – Return Receipt Requested –

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

CONFIDENTIAL SETTLEMENT COMMUNICATION
EPA REVISIONS – 9-25-12

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admit the jurisdictional allegations contained herein; however, the Respondents neither admit nor deny the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waive any right to contest the allegations and their right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consent to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903(15).

ED_002427B_00007203-00002

11. The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. "Owner" is defined in 30 T.A.C. § 335.1(108) [40 C.F.R. § 260.10] as "the person who owns a facility or part of a facility."

13. "Operator" is defined in 30 T.A.C. § 335.1(107) [40 C.F.R. § 260.10] as "the person responsible for the overall operation of a facility".

14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

15. "Facility" is defined in 30 T.A.C. § 335.1(59) [40 C.F.R. § 260.10] as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Road 69, Robstown, TX 78380, EPA I.D. No. TXD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) [40 C.F.R. § 260.10].

18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

19. An oil reclamation unit is located at the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30), three mix tanks (T-31, T-32, and T-33), a centrifuge, and a surge tank (T-34) at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit were inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Processing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment),[1] storage, or disposal of hazardous waste.

24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

28. Recyclable materials destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Processing (treatment) is defined in 30 T.A.C. § 335.1(122) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

30. On various dates after June 15, 2008, certain recyclable materials were processed in the tanks identified in Paragraph 20.

31. The recyclable materials identified in Paragraph 30 did not meet the exemption in 30 T.A.C. § 335.24(c)(4)(C) [40 C.F.R. § 261.6(a)(3)(iv)(C) because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

32. The Respondent TD*X processed (treated) hazardous waste as that term is defined in 30 T.A.C. § 335.1(122) [40 C.F.R. § 260.10] in the tanks identified in Paragraph 20.

33. To date, neither the Respondent USED nor Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the processing (treatment) of hazardous waste in the tanks identified in Paragraph 20.

34. Therefore, the Respondent USET and the Respondent TD*X have violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by processing (treating) hazardous waste without a RCRA permit or interim status.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

35. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

36. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

37. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

38. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

ED_002427B_00007203-00006

39. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

40. Recyclable materials destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

41. On various dates after June 15, 2008, certain recyclable materials were fed into the TDU that did not meet the exemption in 30 T.A.C. § 335.24(c)(4)(C) [40 C.F.R. § 261.6(a)(3)(iv)(C) because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

42. Processing (treatment) is defined in 30 T.A.C. § 335.1(122) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

43. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10] as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air

ED_002427B_00007203-00007

oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

44. The TDU uses heat from an indirect heated rotary dryer to separate the organic constituents from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents to a gas treatment system. The oil is recovered by condensing vapor phase organic constituents in the gas treatment system. A portion of the TDU's recirculating nitrogen carrier gas, along with non-condensable gases, is vented, filtered, and then injected into the combustion chamber of the TDU, where it is burned.

45. The separation of the organic constituents from the hazardous waste in the TDU's indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

46. To date, neither the Respondent USET nor Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

47. Therefore, the Respondent USET and the Respondent TD*X have violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a RCRA permit or interim status.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

48. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

49. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States

ED_002427B_00007203-00008

Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

50. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

51. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

52. On various dates after June 15, 2008, hazardous wastes were fed into the TDU.

53. The TDU uses heat from an indirect heated rotary dryer to separate the organic constituents from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents to a gas treatment system. The oil is recovered by condensing vapor phase organic constituents in the gas treatment system. A portion of the TDU's recirculating nitrogen carrier gas, along with non-condensable gases, is vented, filtered, and then injected into the combustion chamber of the TDU, where it is burned.

54. Processing (treatment) is defined in 30 T.A.C. § 335.1(122) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in

> accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

55. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10] as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

56. The burning of gases in the TDU's combustion chamber constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

57. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion.

58. The combustion chamber of the TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

59. To date, neither the Respondent USET nor Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the combustion chamber of the TDU.

60. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a RCRA permit or interim status.

ED_002427B_00007203-00010

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

61. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

62. "Storage" is defined in 30 T.A.C. § 335.1(143) [40 C.F.R. § 260.10] as "the holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere."

63. Between on or about March 9, 2010, and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

64. The roll-off boxes identified in Paragraph 63 contained material which had entered the oil reclamation process and was being temporarily staged before undergoing subsequent stages of the reclamation process. The Respondent USET discontinued the use of the area called the "Y" for this purpose.

65. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

66. The roll-off boxes identified in Paragraph 63 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

67. The Respondent USET had not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y".

ED_002427B_00007203-00011

68. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a RCRA permit or interim status.

III. COMPLIANCE ORDER

69. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

1. As of the effective date of this CAFO, feedstock for the oil reclamation unit ~~into the IDU~~ shall consist only of non-hazardous waste, and oil-bearing hazardous waste from petroleum refining, production, and transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed hazardous waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable is oil-bearing hazardous waste from processes which meet the definition of the following ~~facilities whose~~ Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) ~~are~~ as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site	213112	Support Activities for Oil and Gas Operations

	preparation and related construction activities performed on a contract or fee basis)		
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from processes meeting the definition of the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate determination whether the hazardous waste in question is "oil-bearing," and that the hazardous waste~~, regardless of SIC/NAICS Codes,~~ was originally generated from petroleum refining, production, or transportation practices.

3. As of the effective date of this CAFO, when the dryer feed is on, the Respondents shall operate the TDU in accordance with the interim operating parameters set forth in Appendix 1, Table A, which is attached and incorporated by reference into this CAFO. The Blending Protocols referenced in Appendix 1 is attached as Appendix 2, and incorporated by reference into this CAFO.

4. As of the effective date of this CAFO, Respondents shall comply with the Start-Up, Shutdown, and Malfunction Plan (SSM Plan) (CDT Plan, Appendix E). The Compliance Demonstration Test (CDT) Plan is attached as Appendix 3 and incorporated by reference into the CAFO.

5. Within sixty (60) days of the effective date of this CAFO, the Respondents shall conduct a tune-up of the external combustion chamber of the TDU in accordance with the following requirements:

a. As applicable, inspect the burner and clean or replace any components of the burner as necessary. The burner inspection may be delayed until the next scheduled or unscheduled unit shutdown.

b. Inspect the flame pattern, as applicable, and adjust the burner as necessary to optimize the flame pattern. The adjustment should be consistent with the manufacturer's specification.

c. Inspect the system controlling the air-to-fuel ratio, as applicable, and ensure that it is correctly calibrated and functioning properly.

d. Optimize total emissions of carbon monoxide (CO). This optimization should be consistent with the manufacturer's specifications, if available.

e. Measure the concentrations in the effluent stream of CO in parts per million, by volume, and oxygen in volume percent, before and after the adjustments are made. Measurements may be either on a dry or wet basis, as long as it is the same basis before and after the adjustments are made.

f. Perform sampling and analysis of both dryer furnace stacks using Method TO-15, "Determination of Volatile Organic Compounds (VOCs) In Air Collected In Specially-Prepared Canisters And Analyzed By Gas Chromatography/Mass Spectrometry (GC/MS)". If the total

organic matter result is greater than 10 ppmV, the analysis shall include speciation of the gas. This information shall be included in the report required in Paragraph 69.A.5.a below.

~~g~~f. Maintain on-site a report documenting the concentrations of CO in the effluent stream in parts per million by volume, and oxygen in volume present, measured before and after the adjustments of the external combustion chamber of the TDU, and a description of any corrective actions taken as part of the combustion adjustment.

~~a~~h. Subsequent tune-ups shall be conducted annually ~~prior to December 31 for each calendar year the TDU operates,~~ until the TDU is reconfigured.

6. Within sixty (60) days of the effective date of this CAFO, the Respondents shall conduct a fuel specification analysis of the purge vent gas for mercury and document that it does not exceed the maximum concentration of 40 micrograms/cubic meter of mercury using test methods ASTM D5954, ASTM D6350, ISO 6978-1:2003(E), or ISO 6978-2:2003(E), or an alternate test method approved by EPA. If the concentration of mercury exceeds 40 micrograms/cubic meter, the Respondents shall immediately notify EPA.

7. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff (AWFCO) at the TDU in accordance with 40 C.F.R. § 63.1206(c)(3) that immediately and automatically cuts off the hazardous waste feed when any component of the AWFCO system fails, or when one or more of the interim operating parameters set forth in Appendix 1, Table A, that are designated as AWFCO parameters, are not met. The Respondents shall also comply with the investigation, recordkeeping, testing, and reporting requirements of 40 C.F.R. § 63.1206(c)(3)(v), (vi) and (vii).

~~9~~8. Within one year of the effective date of this CAFO, the Respondents shall reconfigure the TDU so that the non-condensable vent gases are routed to a thermal oxidizing

unit (TOU) instead of the combustion chamber of the TDU (Reconfigured TDU). After reconfiguration, fuel for the TDU is limited to natural gas and propane.

~~910~~. The Respondents shall operate the Reconfigured TDU during the shakedown period in accordance with the operating parameters limits set forth in Appendix 1, Table B when the dryer feed is on. The Respondent shall not operate the Reconfigured TDU more than 720 hours (including the shakedown period and the Compliance Demonstration Test). The Respondents shall keep records of the hours of operation during the shakedown period. The Respondents shall operate a continuous emissions monitor system (CEMS) for carbon monoxide (CO) for the TOU during the shakedown period. The Respondents shall operate the Reconfigured TOU in a manner that the hourly rolling averages for CO are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

~~The Respondents shall conduct a source test measuring the concentration of CO in the exhaust gases from the TOU. This test shall include three one-hour runs during which the TDU is operated on OBHW material. The emission from the TOU stack shall be monitored for carbon monoxide and oxygen using EPA Method 10. The emissions shall be demonstrated to be less than 100 ppmV CO corrected to 7% O2 in each run. The test frequency shall be once during each six-month period, January 1-June 30 and July 1-December 31, said time period to commence after conducting the CDT and continuing until the TCEQ issues a RCRA Subpart X permit for the Reconfigured TDU. Within forty-five (45) days after conducting the source test, the Respondents shall submit a source test report to EPA summarizing the test results. The time periods for conducting the source test may be changed to once during each twelve (12) month calendar period, January 1-December 31, if the Respondents submit to EPA with a copy to TCEQ, and EPA approves, a detailed feed stream analysis plan that characterizes the waste~~

~~received by the facility and EPA approves the plan. The detailed feedstream analysis plan shall be prepared in accordance with 40 C.F.R. § 264.13 and the EPA Guidance Document "Waste Analysis At Facilities That Generate, Treat, Store, And Dispose of Hazardous Waste", OSWER 9938.4-03 (April 1994). The Respondents will implement the detailed feedstream analysis plan, as approved or modified by EPA.~~

10.~~11.~~ During the shakedown period, the Respondents shall monitor and operate an automatic hazardous waste feed cutoff (AWFCO) at the Reconfigured TDU in accordance with 40 C.F.R. § 63.1206(c) that immediately and automatically cuts off the hazardous waste feed when any component of the AWFCO system fails, or when one or more of the operating parameter limits set forth in Appendix 1, Table 2, that are designated as AWFCO parameters, are not met. The Respondents shall also comply with the investigation, recordkeeping, testing, and reporting requirements of 40 C.F.R. § 63.1206(c)(3)(v), (vi) and (vii).

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

11. The Respondents shall conduct a test measuring the concentration of CO in the exhaust gases from the TOU. This test shall include three one-hour runs during which the TDU is operated on oil-bearing hazardous waste. The emissions from the TOU stack shall be monitored for carbon monoxide and oxygen using EPA Method 10. The emissions shall be demonstrated to be less than 100 ppmV CO corrected to 7% O_2 in each run. The test frequency shall be once during each six-month period, January 1 – June 30 and July 1 - December 31, said time period to commence after conducting the CDT and continuing until the TCEQ issues a RCRA Subpart X permit for the Reconfigured TDU. Within forty-five (45) days after conducting the ~~source~~ test, the Respondents shall submit a test report to EPA summarizing the test results. The time periods for conducting the test may be changed to once during each twelve (12) month calendar period, January 1 - December 31, if the Respondents submit to EPA, with a

Formatted: Font color: Auto, Subscript

copy to TCEQ, a detailed feed stream analysis plan that characterizes the waste received by the facility, and EPA approves the plan. The detailed feedstream analysis plan shall be prepared in accordance with 40 C.F.R. § 264.13 and the EPA Guidance Document "Waste Analysis At Facilities That Generate, Treat, Store, And Dispose of Hazardous Waste", OSWER 9938.4-03 (April 1994). The Respondents will implement the detailed feedstream analysis plan, as approved or modified by EPA, immediately upon receipt of EPA's approval.

12. The Respondents shall prepare a report for the time period beginning on the effective date of this CAFO and ending June 30, 2013, and every six (6) months thereafter. The report shall be submitted to EPA, with a copy to TCEQ, within 30 days of the end of the reporting period. The report shall include the following:

a. For each waste stream accepted by the oil reclamation unit, identify the customer, original generator, waste stream description, RCRA waste codes, the SIC or NAICS code of the process generating the waste, a summary of any analyses conducted by the Respondents to verify the waste streams accepted, and the total volume of waste accepted during the reporting period. If requested by EPA, the Respondents shall provide copies of relevant waste approval documents and manifests for the specific waste streams.

b. All time periods in which there were exceedances of the operating parameters and the AWFCO requirements set forth in Appendix 1, Tables A and B, and exceedances of the hourly rolling averages for CO (Paragraph 69.A.9~~10~~).

~~c. All instances when the SSM Plan is triggered.~~

~~d~~c. All exceedances of the Reconfigured TDU Compliance Standards and the AWFCO requirements established in accordance with Paragraph 69.C.9.

de. The initial Report shall include documentation showing that the tune-up and fuel specification analysis required by Paragraphs 69.A.5 and 69.A.6 have been conducted, and provide documentation showing the date of installation and subsequent operation of the AWFCO system required by Paragraphs 69.A.7.

ef. Documentation showing the installation of the TOU required by Paragraph 69.A.89, and the additional AWFCO requirements required by Appendix 1, Table B (Paragraph 69.A.9).

The Report may be submitted in an electronic format (i.e., compact disk). The Respondents may claim the report as confidential business information (CBI), in accordance with the requirements of 40 C.F.R. Part 2. However, information that is emissions data or a standard or limitation cannot be claimed as CBI. 40 C.F.R. § 2.301(e). If the Report contains any information that is claimed CBI, the Respondents shall provide a redacted version with all CBI deleted.

B. RCRA Permit Modification

1. Within one year of the effective date of this CAFO, the Respondents shall submit to TCEQ, with a copy to EPA, an application for a Class 3 RCRA Permit Modification to permit the Reconfigured TDU as a miscellaneous unit under 40 C.F.R. Part 264, Subpart X in accordance with 30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33].

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC, 40 C.F.R. Part 270, and 40 C.F.R. Part 63, Subpart EEE that are appropriate for the operation of the Reconfigured TDU, including an engineering report, waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) [40 C.F.R. §§ 264.341, 264.347, and 264.351].

3. The Respondents shall also request that the issued RCRA permit modification include the following:

a. ~~d~~ The feedstock limitations ~~as~~ applicable to the operation of the ~~O~~oil reclamation ~~U~~unit under 40 C.F.R. § 261.6(a)(3)(iv)(C) set forth in Paragraph 69.D;

~~e~~b. The investigation, recordkeeping, testing, and reporting requirements of 40 C.F.R. § 63.1206(c)(3)(v), (vi) and (vii);

Formatted: Not Highlight

~~c~~f. Appropriate recordkeeping and reporting requirements; and

~~d~~g. Any applicable risk-based terms and conditions necessary to protect human health and the environment.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ and EPA within the deadline set forth in Paragraph 69.B.1 shall result in the termination of the Respondents' authorization to operate the Reconfigured TDU on that date unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

5. By no later than three and one-half years (42 months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and obtain issuance from the TCEQ of a final RCRA Subpart X permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33], and which incorporates the appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC, 40 C.F.R. Part 270, and 40 C.F.R Part 63, Subpart EEE. In the event that TCEQ does not issue a RCRA Subpart X permit for the Reconfigured TDU as described above by the above deadline, the Respondents' authorization to operate the Reconfigured TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

C. Compliance Demonstration Test

1. The Respondents shall perform a compliance demonstration test (CDT) in accordance with the approved CDT Plan, which is attached as Appendix 2 and incorporated by reference into the CAFO. The CDT requires the Respondents to demonstrate compliance with the emissions limits of 40 C.F.R. § 63.1219(b) set forth in Paragraph C.5, the destruction and removal efficiency standards of 40 C.F.R. § 63.1219(c)(1) set forth in Paragraph C.4, and establish limits for the operating parameters set forth in Paragraph 69.C.6 (Appendix 1, Table C).

2. Within sixty (60) days of the effective date of this CAFO, the Respondents shall submit to EPA for approval, with a copy to TCEQ, a Quality Assurance Project Plan (QAPP) for the CDT. The QAPP shall be prepared in accordance with the EPA Region 6 Guidance "Quick Reference Guide, Test Burn Program Planning for Hazardous Waste Combustion (HWC) Units" dated August 6, 2012. The Respondents shall implement the QAPP as approved or modified by EPA.

3. The Respondents shall implement the CDT in accordance with Appendix 3 within ninety (90) days after reconfiguration of the TDU pursuant to Paragraph 69.A.~~5~~7 of this CAFO.

4. During the CDT, the Respondents must achieve a destruction and removal efficiency (DRE) of 99.99% for toluene, the designated principle organic hazardous constituent (POHC). The DRE shall be calculated in accordance with 40 C.F.R. § 63.1219(c)(1).

5. The emission limits that must be met during the CDT are set forth in 40 C.F.R. § 63.1219(b).

6. The operating parameters limits that will be established during the CDT are set forth in Appendix 1, Table C.

7. The Respondents must not exceed the emission limits set forth in 40 C.F.R.

§ 63.1219(b), and must achieve a DRE of 99.99% for toluene [as set forth in 40 C.F.R. § 63.1219(c)] for all three runs in order to have a successful CDT. If the Respondents determine, based on the results of analyses of stack samples, that they have exceeded any emission standard or failed to meet the DRE requirement during any of the three runs, they must cease hazardous waste burning immediately. The Respondents must make this determination within forty-five (45) days following completion of the CDT. The Respondents may not resume operation of the Reconfigured TDU until the Respondents have submitted and received EPA approval of a revised CDT plan, at which time operations can resume to demonstrate compliance with the emission limits and DRE requirements during all of the three runs.

8. All analyses required by the CDT plan shall be performed by a NELAC accredited laboratory or by a laboratory pre-approved by TCEQ.

9. Within ninety (90) days from completion of the CDT, the Respondents shall submit a CDT Report to EPA and TCEQ prepared in accordance with requirements in the CDT Plan, documenting compliance with the DRE standards and emission limits set forth in Paragraphs 69.C.4 and 69.C.5, and identifying operating parameter limits and AWFCO settings for the parameters set forth in Appendix 1, Table C. The DRE standard, emission limits, operating parameter limits, and the AWFCO settings shall also be set forth in a separate Appendix entitled "Reconfigured TDU Compliance Standards". All data collected during the CDT (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to EPA and TCEQ as part of the CDT Report. However, information in the CDT Report that is emissions data or a standard or limitation cannot

be claimed as CBI. 40 C.F.R. § 2.301(e). If the Report contains any information that is claimed CBI, the Respondents shall provide a redacted version with all CBI deleted.

10. As of the date of the submission of the CDT Report, the Respondent shall comply with all operating requirements set forth in the "Reconfigured TDU Compliance Standards", ~~and the AWPCO requirements of Appendix 1, Table C~~ unless otherwise notified by EPA.

11. EPA will review the CDT Report. EPA will make a finding concerning compliance with the emissions standards, DRE requirements, and other requirements of the CDT. If EPA determines that the Respondents have met all the requirements, it shall issue a Finding of Compliance to the Respondents. If EPA determines that the Respondents did not meet all of the requirements, it shall issue a Finding of Non-Compliance. The issuance of a Finding of Non-Compliance by EPA shall result in the termination of the Respondents' authorization to operate the Reconfigured TDU on that date.

12. The failure to timely submit a CDT Report to EPA and TCEQ within ninety (90) days from completion of the CDT shall result in the termination of the Respondents' authorization to operate the Reconfigured TDU on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

Formatted: Not Highlight

D. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. Unless the TDU and the tanks identified in Paragraph 20 are authorized by the RCRA Permit Modification required by Section III.B of this CAFO (or any subsequent permit amendment) to receive wastes that do not meet the requirements set forth in 40 C.F.R.

~~§ 261.6(a)(3)(iv)(C), feedstock for the oil reclamation unit If the Respondents desire to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after receipt of the RCRA Permit Modification required by Section III. B of this CAFO, feedstock to the reconfigured TDU that qualifies for the exemption~~ shall consist only of

non-hazardous waste, and oil-bearing hazardous waste from petroleum refining, production, and transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed hazardous waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable is oil-bearing hazardous waste from processes which meet the definition of the following ~~facilities whose~~ Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) ~~are~~ as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and	488999	All Other Support Activities for Transportation

	stockyards for transportation)		
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

Nothing in this Section III.D shall be construed to preclude Respondents from seeking authorization from the TCEQ to process oil-bearing materials outside the scope of 40 C.F.R. § 261.6(a)(3)(iv)(C). However, the definition of oil-bearing hazardous waste from petroleum refining, production, or transportation practices set forth in this Paragraph shall remain the same.

2. Using feedstock from processes meeting the definition of the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate determination~~, regardless of SIC/NAICS codes,~~ whether the hazardous waste in question is "oil-bearing," and that the hazardous waste was originally generated from petroleum refining, production, or transportation practices. The Respondents shall request that this provision be placed in the issued RCRA permit as applicable to the oil reclamation unit operation under 40 C.F.R. § 261.6(a)(3)(iv)(C).

E. TCEQ Submission, Revision, and Approval Process

1. For the Class 3 RCRA Permit Modification required be submitted to TCEQ for approval under this CAFO, TCEQ will review the application in accordance with 30 T.A.C. §§ 281.3(c), 281.18 and 281.19(a) and (b). The Respondents must respond to any Notice of Deficiency (NOD), with a copy to EPA, within the time period specified by the TCEQ. In the event that the Respondents fail to submit a timely and complete NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

F. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33], and which incorporates the appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC, and 40 C.F.R. Part 270, and 40 C.F.R Part 63, Subpart EEE.

2. The Respondents may seek relief under the provisions of Section IV.F of this CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

G. EPA Review and Comment on RCRA Permit

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925(c)(3),

40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate appropriate requirements of 40 C.F.R. Parts 264, Subparts I through O and Subparts AA through CC, and 40 C.F.R. Part 63, Subpart EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the Reconfigured TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the issued permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R. § 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.E of this CAFO.

H. Submissions

In all instances in which this Compliance Order requires written submissions to EPA and TCEQ, each submission must be accompanied by the following certification:

> "I certify under penalty of law to the best of my knowledge and belief, that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondent(s) by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

I. Monitoring, Recordkeeping, and Record Retention Requirements

1. Upon the effective date of this CAFO, all interim operating parameters (Appendix 1, Table A), shakedown operating parameters (Appendix 1, Table B), and final operating parameters limits (Appendix 1, Table C and Paragraph 69.C.8) subject to AWFCO limits shall be

monitored by the facility's Continuous Process Monitoring System (CPMS), which records data once per minute in an electronic data log (DLG). In addition, the Respondents shall keep copies of all documents relating to compliance with the operating parameters limits not monitored by the CPMS, and all other documents relating to compliance with Section III of this CAFO. All records, including electronic records, shall be kept for a period of one year after termination of the CAFO. These monitoring and recordkeeping requirements are in addition to any other monitoring and/or recordkeeping requirements required by federal, state, or local laws, regulations, or permits. This information shall be made available to EPA and TCEQ upon request.

2. In addition, the Respondents shall preserve, for a period of one year after termination of the CAFO, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors which in any way relate to this CAFO regardless of any document retention policy to the contrary. This information shall be made available to EPA and TCEQ upon request.

J. EPA Approval of Submissions

EPA will review the plans set forth in Paragraphs 69.A.11 (if applicable) and 69.C.2, and notify the Respondents in writing of EPA's approval or disapproval of the plan or any part thereof. Within the time specified, the Respondents shall address the deficiencies and submit a revised plan. EPA will approve, disapprove, or modify the revised submittal. EPA approved reports shall be incorporated by reference into this CAFO.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

70. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of ONE HUNDRED SIXTY-FIVE THOUSAND, SIX HUNDRED FIFTY-SEVEN **DOLLARS ($**165,657**)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of SIX HUNDRED TWENTY-TWO THOUSAND, FOUR HUNDRED SIXTY-THREE **DOLLARS ($**622,463**).** The Respondent USET shall pay the assessed civil penalty within thirty (30) days of the effective date of this CAFO. The Respondent TD*X Associates L.P. shall pay the assessed civil penalty in four (4) payments as follows:

Payment No. 1: $157,978.35 within thirty (30) days of the effective date of this CAFO.

Payment No. 2: $157,978.35 ($153,268.99 civil penalty plus interest of $4,709.36) within one year of the effective date of this CAFO.

Payment No. 3: $157,978.35 ($154,822.97 civil penalty plus interest of $3,155.38) within two years of the effective date of this CAFO.

Payment No. 4: $157,978.34 ($156,392.69 civil penalty plus interest of $1,585.65) within three years of the effective date of this CAFO.

71. The Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and

RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

72. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

73. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective

ED_002427B_00007203-00031

date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

74. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

75. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. ADDITIONAL REQUIREMENTS

76. The Respondents shall undertake the following additional requirements:

A. The Respondents agree that the oil reclamation unit and the TDU are subject to the requirements of 40 C.F.R. Part 61, Subpart FF.

ED_002427B_00007203-00032

B. Within thirty (30) days of the effective date of the CAFO, the Respondents shall identify the following equipment in the oil reclamation unit and the TDU that is in "volatile hazardous air pollutant" (VHAP) service, as that term is defined by 40 C.F.R. § 61.241:

1. pumps;

2. compressors;

3. pressure relief devices,

4. sampling connection systems;

5. open-ended valves or lines;

6. valves;

7. connectors;

8. surge control vessels;

9. bottoms receivers; and

10. control devices and systems.

The Respondents shall assume all the equipment is in VHAP service unless otherwise demonstrated in accordance with the requirements of 2e61.245(d).

C. Within sixty (60) days of the effective date of the CAFO, the Respondents shall submit a Subpart V Report to EPA, which includes the following information:

1. Identification of all equipment specified in Paragraph 76.B above;

2. Identification of all equipment that is in VHAP service;

3. Identification of all equipment that is not in VHAP service, along with documentation that meets the requirements of 40 C.F.R. § 61.245(d) which demonstrates that the equipment is not in VHAP service. The Report shall be submitted in accordance with Paragraphs 76.K and 76.L.

D. Within ninety (90) days of the effective date of the CAFO, the Respondents shall implement a fugitive monitoring program in accordance with the requirements of 40 C.F.R. Part 61, Subpart V.

E. Within ninety (90) days of the effective date of the CAFO, the Respondent shall submit the notice required by 40 C.F.R. § 61.247(a) to TCEQ.

F. Pursuant to 40 C.F.R. § 61.354(c), as of the effective date of this CAFO, the Respondents shall install, calibrate, maintain, and operate according to manufacturer's specifications, devices to continuously monitor the control devices operations required by 40 C.F.R. § 61.349.

G. Pursuant to 40 C.F.R. § 61.345(a), within 180 days of the effective date of the CAFO, the Respondents shall install, operate, and maintain covers on Bins 1, 2, 3, 4, and the Centrifuge solid bins that meet the requirements of 40 C.F.R. § 61.345(a)(1). The cover and openings shall be in a closed, sealed position at all times that waste is in the container except when it is necessary to use the opening for waste loading, removal, inspection or sampling, as required by 40 C.F.R. § 61.345(a)(1)(ii). The Respondents shall monitor the cover and all openings for no detectable emissions initially and thereafter at least once per year by the methods specified in 40 C.F.R. § 61.355(h).

H. The Respondents shall use a submerged fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

I. Within ninety (90) days after the reconfiguration of the TDU pursuant to Paragraph 69.A.~~78~~ of this CAFO, the Respondents shall conduct performance tests for the TOU and the carbon adsorption system to demonstrate compliance with the requirements of 40 C.F.R. § 61.349. The performance tests shall be conducted in accordance with the requirements of

40 C.F.R. § 61.355. A copy of the performance test results shall be submitted to EPA within thirty (30) days of completion of the performance tests. The performance tests results shall be submitted in accordance with Paragraphs 76.K and 76.L.

J. Within 210 days of the effective date of the CAFO, the Respondent shall submit a written report to EPA. The Report shall include the following:

1. A copy of the fugitive emission program required by Paragraph 76.D.

2. A copy of the notice required by Paragraph 76.E;

3. Documentation showing compliance with Paragraphs 76.F, 76.G, and 76.H.

K. The reports identified in this Section must be accompanied by the following certification:

> "I certify under penalty of law to the best of my knowledge and belief, that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

L. All Reports required under this Section shall be sent to the following:

Craig Lutz
Toxics Enforcement Section (6EN-AT)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

D. STIPULATED PENALTIES

77. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports or Plans - Paragraphs ~~69.A.8, 69.A.10~~69.A.11, 69.A.12, and 69.C.2

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Certain Interim Operating Requirements – Paragraphs 69.A.5, 69.A.6, 69.A.7 (installation of AWFCO only), ~~and 69.~~69A.8, and 69.A.11~~9~~

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

d. Failure to Comply with Additional Requirements – Section IV.C

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

78. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance

with the provisions of Paragraph 71 herein. Interest and late charges shall be paid as stated in Paragraphs 73 - 74 herein.

79. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

E. DISPUTE RESOLUTION

80. If the Respondents object to any decision or directive of EPA in regard to Section III or IV.C, the Respondents shall notify each other and the following persons in writing of its objections, and the basis for those objections, within thirty (30) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

81. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional thirty (30) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

82. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 30-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 30-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

83. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

84. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way, any obligations of the Respondents under this CAFO, 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. If the Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IV.D.

F. FORCE MAJEURE

85. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite the Respondents' best efforts to fulfill the obligation. "Best

efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO, but does include any delays attributable to the TCEQ's permitting process and the conduct of the contested case hearing.

86. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.G of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondents from asserting any claim of force majeure.

87. The Respondent also shall provide notice orally or by electronic or facsimile transmission to the other Respondent not later than 24 hours after the time Respondent first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event, provided that the failure to give such notice shall not limit either Respondent's responsibilities under this CAFO.

88. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations

ED_002427B_00007203-00039

affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.H of this CAFO.

89. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event caused any delay the Respondents' claimed was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event. If the Respondents carry this burden, the delay at issue shall be deemed not to be a violation of the affected obligation of this CAFO.

G. NOTIFICATION

90. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200

Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P.:

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

Section Manager
Industrial and Hazardous Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

H. MODIFICATION

91. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

I. RETENTION OF ENFORCEMENT RIGHTS

92. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

93. Except as herein provided, nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

94. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

95. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents 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 Complainant or 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 this CAFO.

ED_002427B_00007203-00042

96. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

J. INDEMNIFICATION OF EPA

97. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

K. COSTS

98. Each party shall bear its own costs and attorney's fees. Furthermore, each Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

L. TERMINATION

99. At such time as the Respondents believe they have completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary

ED_002427B_00007203-00043

documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

M. EFFECTIVE DATE

100. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

ED_002427B_00007203-00044

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____
TD*X Associates L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right or EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

ED_002427B_00007203-00048

APPENDIX 1 – OPERATING PARAMETERS

TABLE A

TDU OIL RECLAMATION SYSTEM INTERIM REQUIREMENTS PRIOR TO TOU INSTALLATION

Tag No.	Equipment Operating Parameter	Operating Parameter Limit	Compliance Basis
TD-18/19	TDU Dryer, Minimum Combustion Chamber Temperature	Maintain Temperature > 1,400°F	AWFCO: CPMS[1], 60-sec time delay
PT-1	TDU Dryer, Maximum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS, **6-min Rolling Average (RA)**~~0-sec time delay~~
OE-1	Purge Vent Gas Stream Maximum O_2 Concentration	$O_2 < 7\%$	AWFCO: CPMS, 60-sec time delay
FE-101	Maximum Purge Vent Rate	Purge Vent Rate < 180 scfm	AWFCO: CPMS, Hourly Rolling Average (HRA)[2]
M-100~~1~~	Minimum Percent Excess Air, Operation of Purge Vent Injector Air Supply	Purge Vent Air Supply > 20% Excess Air	AWFCO: CPMS, Tuning of Combustion Airflow
TE-28	Maximum Condenser System Exhaust Temperature	Temperature < 120°F	AWFCO: CPMS, HRA
	HEPA Filter Installed and Pressure Change Monitored to Ensure Integrity of Filter	Installed and Δ Pressure Monitoring	Installation Check; Δ Pressure Monitored Once Per Shift
	Maximum TDU Feed Mercury ~~Feed~~ Concentration	[Hg] < 50 ppm/Bin	Blending Protocols ~~[3]~~ & Documentation[3]~~, Waste Analysis Plan~~[4]

[1] Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

[2] 40 C.F.R. §§ ~~63.1209(a)(6) and~~ 63.1209(b)(5).

~~[3] See Paragraph 69.A.3 of the CAFO.~~

[3] See Paragraph 69.A.3 of the CAFO.

	Maximum TDU Feed Organic Halide Concentration	[**Tot**al Organic Halides~~al Chlorine~~][4,5] < 1,500 ppm/Bin	Blending Protocols & Documentation~~, Waste Analysis Plan~~

~~[4] See Paragraph 69.A.8 of the CAFO.~~

[4] Total Chlorine means hydrogen chloride and chlorine expressed as a chloride ($Cl^{(-)}$) equivalent, mass basis.

~~[5] Total Chlorine means hydrogen chloride and chlorine gas. See 40 C.F.R. § 63.1219(b)(6).~~

TABLE B

TDU OIL RECLAMATION SYSTEM REQUIREMENTS AFTER TOU INSTALLATION
PRE-COMPLIANCE DEMONSTRATION TEST OPERATIONS

Tag No.	Equipment Operating Parameter	Shakedown (Pre-Test) OPL	Compliance Basis
PT-1	TDU Dryer, Minimum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS[5], **6-min RA**~~0-sec time delay~~
M-05	TDU Dryer, Cylinder Rotation On	Motor Operating	AWFCO: CPMS, Instantaneous
M-18	Product Discharge System	Motor Operating	AWFCO: CPMS, Instantaneous
M-21	Recirculation Blower Operating	Motor Operating	AWFCO: CPMS, Instantaneous
TT-121	TOU, Minimum Combustion Chamber Temperature	Maintain Temperature > 1,400°F	AWFCO: CPMS, HRA[6]
KY-110	TOU, Minimum Residence Time (Calculated from Purge Vent ~~Maximum~~ Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds[7]	AWFCO: CPMS, HRA
AE-5/ OE-5	TOU Exhaust Gas, Maximum CO Concentration	[CO] < 100 ppmV @ 7% O_2	AWFCO: CEMS for CO, HRA
OE-1	Purge Vent Gas Stream, Maximum O_2 Concentration	[O_2] < 7%	AWFCO: CPMS, Instantaneous
FE-101	Maximum Purge Vent Rate	Vent Flow < 250 scfm	AWFCO: CPMS, HRA
FCV-102	Valve Position to Ensure Purge Vent is not Directed Away from TOU	Valve Closed~~> 0% Open~~	AWFCO: CPMS, 60-sec delay~~instantaneous~~
M-121	Minimum Percent Excess Air , Operation of Purge Vent Injector Air Supply	Purge Vent Air Supply > 20% Excess Air	AWFCO: CPMS, ~~Continuous~~ Tuning of Combustion Airflow

[5] Continuous Process Monitoring System – See Paragraph 69.I of the CAFO.

[6] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

[7] **Residence Time is corrected to 1800°F if the combustion chamber temperature is > 1800°F.**

TE-28	Maximum Condenser System Exhaust Temperature	Maintain Temperature < 120°F	AWFCO: CPMS, HRA
	HEPA Filter Installed and Pressure Change Monitored to Ensure Integrity of Filter	Installed and Δ Pressure Monitoring	Installation Check; Δ Pressure Monitored Once Per Shift
	Maximum TDU Feed Mercury Concentration~~Feed Concentration~~	[Hg] < 50 ppm/Bin	Blending Protocols[8] & Documentation, Feed Stream ~~Waste~~ Analysis Plan (if applicable)[9]
	Maximum TDU Feed Organic Halide Concentration	[Total Organic Halides~~Chlorine~~][10] ~~[11]~~ < 1,500 ppm/Bin	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)~~Waste Analysis Plan~~
	Maximum TDU Feed Semi-Volatile Metals Concentration[11] ~~Feed Rate to TDU~~	N/A	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)~~Waste Analysis Plan~~
	Maximum TDU Feed Low-Volatile Metals Concentration[12] ~~Feed Rate to TDU~~	N/A	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)~~Waste Analysis Plan~~

[8] See Paragraph 69.A.3 of the CAFO.

[9] See Paragraph 69.A.11~~8~~ of the CAFO.

[10] **Total Chlorine means hydrogen chloride and chlorine expressed as a chloride ($Cl^{(-)}$) equivalent, mass basis.**

~~[11] Total Chlorine means hydrogen chloride and chlorine gas. See 40 C.F.R. § 63.1219(b)(6).~~

[11] Semi-volatile metals means a combination of cadmium and lead.

[12] Low-volatile metals means a combination of Arsenic, Beryllium, and Chromium.

TABLE C

TDU OIL RECLAMATION REQUIREMENTS AFTER TOU INSTALLATION POST-COMPLIANCE DEMONSTRATION TEST OPERATIONS

Tag No.	Equipment Operating Parameter	Interim/Final (Post-Test) OPL	Compliance Basis
PT-1	TDU Dryer, Minimum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS[13], 6-min RA~~0-sec time delay~~
M-05	TDU Dryer, Cylinder Rotation On	Motor Operating	AWFCO: CPMS, Instantaneous
M-18	Product Discharge System	Motor Operating	AWFCO: CPMS, Instantaneous
M-21	Recirculation Blower Operating	Motor Operating	AWFCO: CPMS, Instantaneous
TT-121	TOU, Minimum Combustion Chamber Temperature	OPL Established @ > 3-Run Average from CDT	AWFCO: CPMS, HRA[14]
KY-110	TOU, Minimum Residence Time (Calculated from Purge Vent ~~Maximum~~ Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds[15]	AWFCO: CPMS, HRA

[13] Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

[14] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

[15] Residence Time is corrected to 1800°F if the combustion chamber temperature is > 1800°F.

AE-5/ OE-5	TOU Exhaust Gas, Maximum CO Concentration	Semi-Annual Testing until Waste Analysis Plan Approved, then Annual Testing	Performance Testing in lieu of CEMS; Waste Analysis Plan based with other OPLs
OE-1	Purge Vent Gas Stream, Maximum O_2 Concentration	$[O_2] < 7\%$	AWFCO: CPMS, Instantaneous
FE-101	Maximum Purge Vent Rate	Vent Flow < 250 scfm	AWFCO: CPMS, HRA
FCV-102	Valve Position to Ensure Purge Vent is not Directed Away from TOU	Valve Closed~~> 0% Open~~	AWFCO: CPMS, 60-sec time delay~~Instantaneous~~
M-121	Minimum Percent Excess Air~~-~~, Operation of Purge Vent Injector Air Supply	Purge Vent Air Supply > 20% Excess Air	AWFCO: CPMS, ~~Continuous~~ Tuning of Combustion Airflow
TE-28	Maximum Condenser System Exhaust Temperature	OPL Established @ < 3-run Average From 4,000 ppm Based on~~From based on~~ CDT	AWFCO: CPMS, HRA
	HEPA Filter Installed and Pressure Change Monitored to Ensure Integrity of Filter	Installed and Δ Pressure Monitoring	Installation Check; Δ Pressure Monitored Once Per Shift
	Maximum TDU Feed Mercury ~~Feed~~ Concentration	[Hg] < 50 ppm/Bin	Blending Protocols[16] & Documentation, Feed Stream Analysis Plan (if applicable)[17]~~Waste Analysis Plan[18]~~
	Maximum TDU Feed Organic Halide Concentration	[Total Organic Halides ~~Chlorine~~][18] OPL Established @ < 4000~~1,500~~ ppm/Bin Based on CDT	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)~~Waste Analysis Plan~~

[16] See Paragraph 69.A.3 of the CAFO.

[17] See Paragraph 69.A.11 of the CAFO.

~~[18] See Paragraph 69.A.8 of the CAFO.~~

[18] Total Chlorine means hydrogen chloride and chlorine expressed as a chloride ($Cl^{(-)}$) equivalent, mass basis. ~~gas. See 40 C.F.R. § 63.1219(b)(6).~~

	Maximum TDU Feed Semi-Volatile Metals Concentration[19] ~~Feed Rate to TDU~~	OPL Established as Measured Ratio[20]	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)~~Waste Analysis Plan~~
	Maximum TDU Feed Low-Volatile Metals Concentration[21] ~~Feed Rate to TDU~~	OPL Established as Measured Ratio[22]	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)~~Waste Analysis Plan~~

[19] Semi-volatile metals means a combination of cadmium and lead.

[20] **Maximum TDU Feed Concentration ~~SVM and LVM Feed Rates to TDU~~ established as measured ration from emissions data collected during CDT. See plan example calculations.**

[21] Low-volatile metals means a combination of Arsenic, Beryllium, and Chromium.

[22] **Maximum TDU Feed Concentration ~~SVM and LVM Feed Rates to TDU~~ established as measured ratio from emissions data collected during CDT. See plan example calculations.**

APPENDIX 2 – BLENDING PROTOCOLS

CONTAINS CONFIDENTIAL BUSINESS INFORMATION

APPENDIX 3

COMPLIANCE DEMONSTRATION TEST PLAN

CONTAINS CONFIDENTIAL BUSINESS INFORMATION

APPENDIX 2 – BLENDING PROTOCOLS

CONTAINS CONFIDENTIAL BUSINESS INFORMATION

DOCUMENT STORED IN FILE ROOM

APPENDIX 3

COMPLIANCE DEMONSTRATION TEST PLAN

CONTAINS CONFIDENTIAL BUSINESS INFORMATION

DOCUMENT STORED IN FILE ROOM

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copies of the CAFO were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____