CONFIDENTIAL SETTLEMENT COMMUNICATION
EPA REVISIONS (CLEAN) – 9-18-12

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).

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].

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

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

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.

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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".

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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 into 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 the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable is oil-bearing hazardous waste from 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	213112	Support Activities for Oil and Gas Operations

	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 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: ~~USET/TD*X to provide additional language for this section~~

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. 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.

g. ~~This~~ 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).

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~~8. Within ninety (90) days of the effective date of this CAFO, the Respondents shall submit a waste analysis plan (WAP) for the TDU to EPA for approval, with a copy to TCEQ. The WAP 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 WAP, as approved or modified by EPA, immediately upon receipt of EPA's approval.~~

9. 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.

10. The Respondents shall operate the Reconfigured TDU during the shakedown period in accordance with the operating parameters limits set forth in Appendix 1, Table ~~2~~ 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 ~~one minute and~~ 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).

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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. ~~**USET/TD*X to provide language regarding semi-annual CO monitoring.**~~

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)(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 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).

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12. The Respondents shall prepare a report for the time period beginning on the effective date of this CAFO and ending June ~~13~~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: ~~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:~~

~~USET/TD*X to provide revised language for this section.~~

a. For each waste stream accepted by the o~~O~~il r~~R~~eclamation ~~Facility~~unit, i~~I~~dentify the customer, original generator, waste stream description, RCRA waste codes, the ~~customer's~~ SIC ~~and~~ or NAICS code of the process generating the waste, and the total volume of waste accepted during the reporting period ~~for all waste streams processed by the oil reclamation unit for the previous six month 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 set forth in Appendix 1, Tables A and B, and exceedances of the ~~one minute and~~ hourly rolling averages for CO (Paragraph 69.A.10).

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c. All instances when the SSM Plan is triggered [WHAT IS NEEDED HERE? WE WOULD LIKE DEFINITION ON THIS REQUIREMENT] .

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d. All exceedances of the Reconfigured TDU Compliance Standards and the AWFCO requirements ~~(~~established in accordance with Paragraph 69.C.9~~)~~.

e. 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.

f. Documentation showing the installation of the TOU required by Paragraph 69.A.9, and the additional AWFCO requirements required by Appendix 1, Table ~~2~~B.

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 ~~final~~ issued RCRA permit include the following:

a. ~~Emission limits, destruction and removal efficiency (DRE), operating parameters limits, and AWFCO cutoff limits established under Compliance Demonstration Test conducted~~

~~pursuant to Paragraph 69.C of this CAFO, and set forth in the Reconfigured TDU Compliance Standards and the Finding of Compliance (Paragraph 69.C);~~

~~b. The SSM Plan (Paragraph 69.A.4);~~

~~c. The Waste Analysis Plan (Paragraph 69.A.8);~~

d. The feedstock limitations as applicable to the operation of the Oil Reclamation Unit under 40 CFR § 261.6(a)(3)(iv)(C) set forth in Paragraph 69.D;

e. The investigation, recordkeeping, testing, and reporting requirements of 40 C.F.R. § 63.1206(c)(3) (v), (vi) and (vii);

f. Appropriate recordkeeping and reporting requirements; and

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 ~~final~~ 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)~~in Paragraph C.5, the destruction and removal efficiency standards ~~of 40 C.F.R. § 63.1219(c)(1)~~in Paragraph C.4, and establish limits for the operating parameters set forth in ~~Appendix 1, Table 3.~~Paragraph C.6.

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" 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 the EPA approved plan~~Appendix 3 within ninety (90) days after reconfiguration of the TDU pursuant to Paragraph 69.A.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 CPT 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 ~~trial burn~~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, ~~a At~~ which time operations can resume to demonstrate compliance with the emission limits and DRE requirements during all of the three runs. ~~The Respondents' authorization to operate the TDU terminates on that date~~.

8. All analyses required by the ~~trial burn~~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 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 ~~trial burn~~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 ~~and EPA~~ 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.

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10. As of the date of the submission of the CDT Report, the Respondent shall comply with all operating requirements of the "Reconfigured TDU Compliance Standards", and the AWFCO requirements of ~~40 C.F.R. § 63.1206(c)(3)~~Appendix 1, Table 3, for AWFCO parameters, unless otherwise notified by EPA.

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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 ~~Test~~. 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 ~~test trial~~ 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).

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

1. If the Respondents desire~~s~~ to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after ~~it~~ receipt~~ves~~ of the ~~its~~ 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 waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable is oil-bearing hazardous waste from 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 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.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 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 ~~actually came~~was originally generated from petroleum refining, production, or transportation practices~~ at the generator's facility~~. 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).~~For the Class 3 Permit Modification submitted to TCEQ for approval under this CAFO, TCEQ will review this application 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] 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 ~~final~~ 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 Respondents 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.8 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 _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).** 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:

Payment No. 1: $_____ within thirty (30) days of the effective date of this CAFO.

Payment No. 2: $_____ ($_____ civil penalty plus interest of $_____) within _____ of the effective date of this CAFO.

Payment No. 3: $_____ ($_____ civil penalty plus interest of $_____) within _____ of the effective date of this CAFO.

Payment No. 4: $_____ ($_____ civil penalty plus interest of $_____) within _____ 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 date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not

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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, 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 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 76.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 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.7 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:

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a. Failure to Timely Submit Reports or Plans - Paragraphs 69.A.8, 69.A.10 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.A.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 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.

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

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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 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.

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

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

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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

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, Minimum Combustion Chamber Temperature	Maintain Temperature > 1,400°F	AWFCO: CPMS[2], 60-sec time delay
PT-1	TDU, Maximum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS, 60-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)[3]
M-101	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 Mercury Feed Concentration	[Hg] < 50 ppm/Bin	Blending Protocols[4] & Documentation, Waste Analysis Plan[5]
	Maximum TDU Organic Halide Concentration	[Total Chlorine][6] < 1,500 ppm/Bin	Blending Protocols &

[2] Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

[3] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

[4] See Paragraph 69.A.3 of the CAFO.

[5] See Paragraph 69.A.8 of the CAFO.

			Documentation, Waste Analysis Plan

[6] 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, Minimum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS[7], 60-sec time delay
M-05	TDU, 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[8]
KY-110	TOU, Minimum Residence Time (Calculated from Maximum Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds	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 > 0% Open	AWFCO: CPMS, 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	Maintain Temperature < 120°F	AWFCO: CPMS, HRA

[7] Continuous Process Monitoring System – See Paragraph 69.I of the CAFO..

[8] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

	Temperature		
	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 Mercury Feed Concentration	[Hg] < 50 ppm/Bin	Blending Protocols[9] & Documentation, Waste Analysis Plan[10]
	Maximum TDU Organic Halide Concentration	[Total Chorine][11] < 1,500 ppm/Bin	Blending Protocols & Documentation, Waste Analysis Plan
	Maximum Semi-Volatile Metals[12] Feed Rate to TDU	N/A	Blending Protocols & Documentation, Waste Analysis Plan
	Maximum Low-Volatile Metals[13] Feed Rate to TDU	N/A	Blending Protocols & Documentation, Waste Analysis Plan

[9] See Paragraph 69.A.3 of the CAFO.

[10] See Paragraph 69.A.8 of the CAFO.

[11] Total Chlorine means hydrogen chloride and chlorine gas. See 40 C.F.R. § 63.1219(b)(6).

[12] Semi-volatile metals means a combination of cadmium and lead.

[13] 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, Minimum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS[14], 60-sec time delay
M-05	TDU, 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[15]
KY-110	TOU, Minimum Residence Time (Calculated from Maximum Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds	AWFCO: CPMS, HRA
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 > 0% Open	AWFCO: CPMS, 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 @ < 4,000 ppm based on CDT	AWFCO: CPMS, HRA

[14] Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

[15] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

	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 Mercury Feed Concentration	[Hg] < 50 ppm/Bin	Blending Protocols[16] & Documentation, Waste Analysis Plan[17]
	Maximum TDU Organic Halide Concentration	[Total Chlorine][18] < 1,500 ppm/Bin	Blending Protocols & Documentation, Waste Analysis Plan
	Maximum Semi-Volatile Metals[19] Feed Rate to TDU	OPL Established as Measured Ratio[20]	Blending Protocols & Documentation, Waste Analysis Plan
	Maximum Low-Volatile Metals[21] Feed Rate to TDU	OPL Established as Measured Ratio[22]	Blending Protocols & Documentation, Waste Analysis Plan

[16] See Paragraph 69.A.3 of the CAFO.

[17] See Paragraph 69.A.8 of the CAFO.

[18] Total Chlorine means hydrogen chloride and chlorine gas. See 40 C.F.R. § 63.1219(b)(6).

[19] Semi-volatile metals means a combination of cadmium and lead.

[20] Maximum 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 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

_____

CONFIDENTIAL SETTLEMENT COMMUNICATION
EPA REVISIONS (CLEAN) – 9-18-12

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).

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].

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

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

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.

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".

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 into 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 the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable is oil-bearing hazardous waste from 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	213112	Support Activities for Oil and Gas Operations

	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 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: ~~USET/TD*X to provide additional language for this section~~

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. 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.

g. ~~This~~ 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 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).

~~8. Within ninety (90) days of the effective date of this CAFO, the Respondents shall submit a waste analysis plan (WAP) for the TDU to EPA for approval, with a copy to TCEQ. The WAP 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 WAP, as approved or modified by EPA, immediately upon receipt of EPA's approval.~~

9. 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.

10. The Respondents shall operate the Reconfigured TDU during the shakedown period in accordance with the operating parameters limits set forth in Appendix 1, Table ~~2~~ 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 one minute and 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. ~~**USET/TD*X to provide language regarding semi-annual CO monitoring.**~~

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)(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 operating parameter limits set forth in Appendix 1, Table 2 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).

12. The Respondents shall prepare a report for the time period beginning on the effective date of this CAFO and ending June ~~13~~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:~~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:~~

~~**USET/TD*X to provide revised language for this section.**~~

a. For each waste stream accepted by the o~~O~~il r~~R~~eclamation ~~Facility~~unit, i~~I~~dentify the customer, original generator, waste stream description, RCRA waste codes, the ~~customer's~~ SIC

~~and~~ or NAICS code of the process generating the waste, and the total volume of waste accepted during the reporting period ~~for all waste streams processed by the oil reclamation unit for the previous six month 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 set forth in Appendix 1, Tables A and B, and exceedances of the one minute and hourly rolling averages for CO (Paragraph 69.A.10).

c. All instances when the SSM Plan is triggered.

d. All exceedances of the Reconfigured TDU Compliance Standards and the AWFCO requirements ~~(~~established in accordance with Paragraph 69.C.9~~)~~.

e. 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.

f. Documentation showing the installation of the TOU required by Paragraph 69.A.9, and the additional AWFCO requirements required by Appendix 1, Table ~~2~~B.

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 ~~final~~ issued RCRA permit include the following:

a. ~~Emission limits, destruction and removal efficiency (DRE), operating parameters limits, and AWFCO cutoff limits established under Compliance Demonstration Test conducted pursuant to Paragraph 69.C of this CAFO, and set forth in the Reconfigured TDU Compliance Standards and the Finding of Compliance (Paragraph 69.C);~~

~~b. The SSM Plan (Paragraph 69.A.4);~~

~~c. The Waste Analysis Plan (Paragraph 69.A.8);~~

d. The feedstock limitations as applicable to the operation of the Oil Reclamation Unit under 40 CFR§ 261.6(a)(3)(iv)(C) set forth in Paragraph 69.D;

e. The investigation, recordkeeping, testing, and reporting requirements of 40 C.F.R. § 63.1206(c)(3);

f. Appropriate recordkeeping and reporting requirements; and

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 ~~final~~ 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)~~in Paragraph C.5, the destruction and removal efficiency standards ~~of 40 C.F.R. § 63.1219(c)(1)~~in Paragraph C.4, and establish limits for the operating parameters set forth in ~~Appendix 1, Table 3.~~Paragraph C.6.

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" 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 the EPA approved plan~~Appendix 3 within ninety (90) days after reconfiguration of the TDU pursuant to Paragraph 69.A.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 CPT 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 ~~trial burn~~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. ~~a At~~ which time operations can resume to demonstrate compliance with the emission limits and DRE requirements during all of the three runs. ~~The Respondents' authorization to operate the TDU terminates on that date~~.

8. All analyses required by the ~~trial burn~~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 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 ~~trial burn~~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 ~~and EPA~~ 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 of the "Reconfigured TDU Compliance Standards", and the AWFCO requirements of 40 C.F.R. § 63.1206(c)(3), 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 ~~Test~~. 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 test trial 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).

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

1. If the Respondent~~s~~ desire~~s~~ to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after ~~it~~ receipt~~ves~~ of the ~~its~~ 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 waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable is oil-bearing hazardous waste from 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 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	424720	Petroleum and Petroleum Products

	Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)		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 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 ~~actually came~~was originally generated from petroleum refining, production, or transportation practices~~ at the generator's facility~~. 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).~~For the Class 3~~

~~Permit Modification submitted to TCEQ for approval under this CAFO, TCEQ will review this application 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] 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 ~~final~~ 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 Respondents 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 plan~~s~~ set forth in Paragraphs ~~69.A.8 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 _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).** 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:

Payment No. 1: $_____ within thirty (30) days of the effective date of this CAFO.

Payment No. 2: $_____ ($_____ civil penalty plus interest of $_____) within _____ of the effective date of this CAFO.

Payment No. 3: $_____ ($_____ civil penalty plus interest of $_____) within _____ of the effective date of this CAFO.

Payment No. 4: $_____ ($_____ civil penalty plus interest of $_____) within _____ 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 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

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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, 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 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 76.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 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.7 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 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.A.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 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.

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 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.

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

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, Minimum Combustion Chamber Temperature	Maintain Temperature > 1,400°F	AWFCO: CPMS[2], 60-sec time delay
PT-1	TDU, Maximum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS, 60-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)[3]
M-101	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 Mercury Feed Concentration	[Hg] < 50 ppm/Bin	Blending Protocols[4] & Documentation, Waste Analysis Plan[5]

[2] Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

[3] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

[4] See Paragraph 69.A.3 of the CAFO.

[5] See Paragraph 69.A.8 of the CAFO.

	Maximum TDU Organic Halide Concentration	[Total Chlorine][6] < 1,500 ppm/Bin	Blending Protocols & Documentation, Waste Analysis Plan

[6] 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, Minimum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS[7], 60-sec time delay
M-05	TDU, 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[8]
KY-110	TOU, Minimum Residence Time (Calculated from Maximum Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds	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 > 0% Open	AWFCO: CPMS, 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	Maintain Temperature < 120°F	AWFCO: CPMS, HRA

[7] Continuous Process Monitoring System – See Paragraph 69.I of the CAFO..

[8] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

	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 Mercury Feed Concentration	[Hg] < 50 ppm/Bin	Blending Protocols[9] & Documentation, Waste Analysis Plan[10]
	Maximum TDU Organic Halide Concentration	[Total Chorine][11] < 1,500 ppm/Bin	Blending Protocols & Documentation, Waste Analysis Plan
	Maximum Semi-Volatile Metals[12] Feed Rate to TDU	N/A	Blending Protocols & Documentation, Waste Analysis Plan
	Maximum Low-Volatile Metals[13] Feed Rate to TDU	N/A	Blending Protocols & Documentation, Waste Analysis Plan

[9] See Paragraph 69.A.3 of the CAFO.

[10] See Paragraph 69.A.8 of the CAFO.

[11] Total Chlorine means hydrogen chloride and chlorine gas. See 40 C.F.R. § 63.1219(b)(6).

[12] Semi-volatile metals means a combination of cadmium and lead.

[13] 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, Minimum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS[14], 60-sec time delay
M-05	TDU, 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[15]
KY-110	TOU, Minimum Residence Time (Calculated from Maximum Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds	AWFCO: CPMS, HRA
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 > 0% Open	AWFCO: CPMS, 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 @ < 4,000 ppm based on CDT	AWFCO: CPMS, HRA

[14] Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

[15] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

	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 Mercury Feed Concentration	[Hg] < 50 ppm/Bin	Blending Protocols[16] & Documentation, Waste Analysis Plan[17]
	Maximum TDU Organic Halide Concentration	[Total Chlorine][18] < 1,500 ppm/Bin	Blending Protocols & Documentation, Waste Analysis Plan
	Maximum Semi-Volatile Metals[19] Feed Rate to TDU	OPL Established as Measured Ratio[20]	Blending Protocols & Documentation, Waste Analysis Plan
	Maximum Low-Volatile Metals[21] Feed Rate to TDU	OPL Established as Measured Ratio[22]	Blending Protocols & Documentation, Waste Analysis Plan

[16] See Paragraph 69.A.3 of the CAFO.

[17] See Paragraph 69.A.8 of the CAFO.

[18] Total Chlorine means hydrogen chloride and chlorine gas. See 40 C.F.R. § 63.1219(b)(6).

[19] Semi-volatile metals means a combination of cadmium and lead.

[20] Maximum 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 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

_____

CONFIDENTIAL SETTLEMENT COMMUNICATION
EPA REVISIONS (CLEAN) – 9-6-12

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).

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].

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

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

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. 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."

58. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion.

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."

60. 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. 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. 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

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.

64. "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."

65. 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.

66. The roll-off boxes identified in Paragraph 65 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.

67. "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.*"

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

69. 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".

70. 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

71. 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 transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable ~~is oil-bearing hazardous waste from facilities whose~~are materials generated from processes meeting the definition established for 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 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 actually came from petroleum refining, production, or transportation practices at the generator's facility.

3. Within seven (7) days ofOn the effective date of this CAFO, the Respondents shall operate the TDU in accordance with the following submit to EPA for approval, with a copy to TCEQ, interim limits on operating parameters when the dryer feed is on, including, but not limited, to the following: as such operating parameters may be more fully described in the compliance demonstration test (CDT) plan dated September ____, 2012, approved by EPA (CDT Plan):

TE-18 / 19	TDU Dryer Process Heater Combustion Chamber Temperature	>1,400°F	AWFCO
FE-101	Process Vent Rate, 1-hr R.A.	<180 scfm	AWFCO
M-101	Operation of Process Vent injector air supply	>20% xs air	AWFCO
	Mercury Feed Concentration Limit to TDU	<50 ppm	
	Organic Halide Concentration Limit to TDU	<1,500 ppm	
	HEPA Filter	installed	
TE-28	Condenser System Exhaust Temperature, 1-hr R.A.	<120°F	AWFCO
OE-1	Vent gas stream O2 concentration	<7% O2	AWFCO
PT-1	Dryer internal gas pressure	<0.00" w.c.	AWFCO
TE-14A	Desorber Solids Temperature	>650°F	

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 (AWFCO) at the TDU ~~in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).~~ that immediately and automatically cuts off the hazardous waste feed when any of the conditions in Table 5-2 of the CDT Plan, as supplemented by Table 6-3 of the CDT Plan, are met~~.~~; provided, however, that AWFCOs related to the thermal oxidizer unit (TOU) (TT-121 and KY-110) required by Paragraph 71.A.5 will not be installed until the TOU is placed into operation.

5. Within ~~ninety (90) days~~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 oxidizer unit (~~TOU~~)~~ instead of the combustion chamber of the TDU (Reconfigured TDU). After the reconfiguration has occurred, for the purposes of Section III and IV.C of this CAFO only, references to the Reconfigured 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:~~The Respondents shall operate the Reconfigured TDU in accordance with the following operating parameters for the shakedown period, as such operating parameters may be more fully described in Table 2-1 of the CDT Plan:

TT-121	Minimum TOU Combustion Chamber Temperature, 1-hr R.A	>1,400°F	AWFCO
KY-110	Maximum TOU Flow Rate (Minimum Residence Time), 1-hr R.A.	>0.5 sec	AWFCO
FE-101	Minimum Hazardous Waste Feedrate (Process Vent Rate), 1-hr R.A.	<250 scfm	AWFCO
M-121	Operation of Waste Firing System	>20% xs air	AWFCO
AE-5 OE-5	CEM CO ppmV @ 7% O2, 1-hr R.A.	<100	AWFCO
	Mercury Feed Concentration Limit to TDU	<50 ppm	
	Organic Halide Concentration Limit to TDU	<1,500 ppm	
	HEPA Filter	installed	
TE-28	Condenser System Exhaust Temperature, 1-hr R.A.	<120°F	AWFCO
TE-14A	Desorber Solids Temperature	>650°F	
OE-1	Vent gas stream O2 concentration	<7% O2	AWFCO
PT-1	Dryer internal gas pressure	<0.00" w.c.	AWFCO
FCV-102	Valve position of process vent directed away from TOU	Valve >0% open	AWFCO
M-21	Recirculation Blower Operating	Motor operation	AWFCO

M-05	Dryer Cylinder Rotation	Motor operation	AWFCO
M-18	Product Discharge operational	Motor operation	AWFCO

The Respondents shall operate continuous emissions monitoring for the measurement of carbon monoxide (CO) during the shakedown period.

~~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~~ sixty (60~~90~~) 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 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. 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~~boiler~~, and a description of any corrective actions taken as part of the combustion adjustment.

~~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~~sixty (~~120~~60) 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~~conduct a fuel specification analysis of the process vent gas for mercury and document that it does not exceed the maximum concentration of 40 micrograms / cubic meter of mercury in accordance with the process specified in the ~~approved~~ CDT Plan.

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 for all waste streams processed by the oil reclamation unit , ~~copies of the relevant waste approval documents, and manifests~~ for the previous six month 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 ~~where~~ which there were exceedances of the ~~one minute and hourly rolling averages required under Paragraph 72.A.7.~~operating parameters specified in Paragraphs 71.A.3 and 71.A.6 of this CAFO when the dryer feed is on.

c. The initial Report shall include documentation showing the installation dates of the equipment required by Paragraphs 71.A.4~~,~~ and -A.5~~, 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, 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, Subparts I through O and AA through CC that are appropriate for the operation of the Reconfigured 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]~~.~~, except that with regard to continuous monitoring required by 40 C.F.R. § 264(a)(i) and (a)(2), only continuous monitoring of combustion temperature shall be required.

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

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

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~~71.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 ~~two~~ three and one-half years (42~~30~~ months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and ~~have~~ 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 ~~applicable~~ appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and Part 63, Subpart~~s 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~~C. ~~Trial Burn~~Compliance Demonstration Test

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.~~compliance demonstration test (CDT) in accordance with the plan for the CDT dated September _____, 2012, approved by EPA (CDT Plan).

2. Within ~~one hundred twenty~~sixty (~~120~~60) 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.~~ Quality assurance project plan (QAPP) for the CDT. The QAPP shall be prepared in accordance with EPA guidance document, Quick Reference Guide, Test Program Planning for HWC Units, dated August 2012.

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 CDT ~~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).~~ installation of the TOU pursuant to Paragraph 71.A.5 of this CAFO.

~~5~~4. 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~~CDT. 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 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. 120 7(j), and 63. 121 0(d), w~~Within ninety (90) days from completion of the ~~trial burn and the CMS performance test~~CDT, the Respondents shall submit a ~~Notification of Compliance (NOC)~~CDT report to TCEQ and EPA documenting compliance with the ~~emission standards and continuous monitoring system requirements~~CDT Plan~~,~~ and identifying operating parameters ~~limits under 40 C.F.R. § 63.1209~~ identified in the CDT. All data collected during the ~~trial burn and the CMS performance test~~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 TCEQ and EPA along with the NOC~~in the report.

~~8~~6. As of the date of the submission of the ~~NOC~~CDT report, the Respondent shall comply with all operating requirements of the ~~NOC~~CDT report~~, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219~~.

~~9~~7. The failure to timely submit ~~an NOC~~a CDT report to TCEQ and EPA within ninety (90) days from completion of the ~~trial burn and the CMS performance test~~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).

~~F~~D. 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 petroleum refining, production, and transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable ~~is oil-bearing hazardous waste~~are materials generated from ~~facilities who~~processes meeting the definition ~~se~~ 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,	213112	Support Activities for Oil and Gas

	NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)		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.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).

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 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 the issued RCRA permit.

GE. 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~~respond to any Notice of Deficiency (NOD), with a copy to EPA, within ~~thirty (30) days of receipt of the NOD~~the time period specified by the TCEQ. In the event that the Respondents fail to submit a timely and ~~good-faith approvable~~ complete 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]~~unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

~~H~~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 ~~applicable~~ appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC, and Part 63, Subpart~~s A and~~ EEE.

2. The Respondents may seek relief under the provisions of Section IV.F of ~~the~~ 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.

~~I~~G. 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~~ 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, 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 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 final permit, except as provided by the CDT Plan. 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~~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 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

72. 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 ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

73. 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. 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.

75. 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).

76. 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

77. 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

78. 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.

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.K and 77.L.

D. If applicable, 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. If applicable, 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 submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

I. Within _____ 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.K and 77.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. If applicable, a copy of the fugitive emission program required by Paragraph 77.D;

2. If applicable, a copy of the notice required by Paragraph 77.E;

3. Documentation showing compliance with Paragraphs 77.F, 77.G, and 77.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

79. 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 71.A.3, 71.A.6, 71.A.8, 71.A.9, 71.C.1, 71.C.5, 71.D.1, and 71.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 71.A.4, 71.A.5, and 71.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.

80. 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 73 herein. Interest and late charges shall be paid as stated in Paragraphs 75 - 76 herein.

81. 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

82. 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

83. 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.

84. 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.

85. 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).

86. 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

87. 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.

88. 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.

89. 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.

90. 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.

91. 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

92. 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

93. 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

94. 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.

95. 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.

96. 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.

97. 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.

98. 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

99. 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

100. 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

101. 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

102. 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

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

_____

G:\U\US Ecology\GeneralOperations(007434)\2012_09-11_USET-TDX CAFO - EPA Revisions - 9-6-12 (mbr)

CONFIDENTIAL SETTLEMENT COMMUNICATION
EPA REVISIONS (CLEAN) – 9-6-12

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).

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].

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

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

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. 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."

58. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion.

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."

60. 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. 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. 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

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.

64. "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."

65. 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.

66. The roll-off boxes identified in Paragraph 65 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.

67. "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.*"

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

69. 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".

70. 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

71. 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 transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable ~~is oil-bearing hazardous waste from facilities whose~~are materials generated from processes meeting the definition established for 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 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 actually came from petroleum refining, production, or transportation practices at the generator's facility.

3. Within seven (7) days ofOn the effective date of this CAFO, the Respondents shall operate the TDU in accordance with the following submit to EPA for approval, with a copy to TCEQ, interim limits on operating parameters when the dryer feed is on, including, but not limited, to the following: as such operating parameters may be more fully described in the compliance demonstration test (CDT) plan dated September ____, 2012, approved by EPA (CDT Plan):

TE-18 / 19	TDU Dryer Process Heater Combustion Chamber Temperature	>1,400°F	AWFCO
FE-101	Process Vent Rate, 1-hr R.A.	<180 scfm	AWFCO
M-101	Operation of Process Vent injector air supply	>20% xs air	AWFCO
	Mercury Feed Concentration Limit to TDU	<50 ppm	
	Organic Halide Concentration Limit to TDU	<1,500 ppm	
	HEPA Filter	installed	
TE-28	Condenser System Exhaust Temperature, 1-hr R.A.	<120°F	AWFCO
OE-1	Vent gas stream O2 concentration	<7% O2	AWFCO
PT-1	Dryer internal gas pressure	<0.00" w.c.	AWFCO
TE-14A	Desorber Solids Temperature	>650°F	

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 (AWFCO) at the TDU ~~in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).~~ that immediately and automatically cuts off the hazardous waste feed when any of the conditions in Table 5-2 of the CDT Plan, as supplemented by Table 6-3 of the CDT Plan, are met~~.~~; provided, however, that AWFCOs related to the thermal oxidizer unit (TOU) (TT-121 and KY-110) required by Paragraph 71.A.5 will not be installed until the TOU is placed into operation.

5. Within ~~ninety (90) days~~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 oxidizer unit (~~TOU~~)~~ instead of the combustion chamber of the TDU (Reconfigured TDU). After the reconfiguration has occurred, for the purposes of Section III and IV.C of this CAFO only, references to the Reconfigured 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:~~The Respondents shall operate the Reconfigured TDU in accordance with the following operating parameters for the shakedown period, as such operating parameters may be more fully described in Table 2-1 of the CDT Plan:

TT-121	Minimum TOU Combustion Chamber Temperature, 1-hr R.A	>1,400°F	AWFCO
KY-110	Maximum TOU Flow Rate (Minimum Residence Time), 1-hr R.A.	>0.5 sec	AWFCO
FE-101	Minimum Hazardous Waste Feedrate (Process Vent Rate), 1-hr R.A.	<250 scfm	AWFCO
M-121	Operation of Waste Firing System	>20% xs air	AWFCO
AE-5 OE-5	CEM CO ppmV @ 7% O2, 1-hr R.A.	<100	AWFCO
	Mercury Feed Concentration Limit to TDU	<50 ppm	
	Organic Halide Concentration Limit to TDU	<1,500 ppm	
	HEPA Filter	installed	
TE-28	Condenser System Exhaust Temperature, 1-hr R.A.	<120°F	AWFCO
TE-14A	Desorber Solids Temperature	>650°F	
OE-1	Vent gas stream O2 concentration	<7% O2	AWFCO
PT-1	Dryer internal gas pressure	<0.00" w.c.	AWFCO
FCV-102	Valve position of process vent directed away from TOU	Valve >0% open	AWFCO
M-21	Recirculation Blower Operating	Motor operation	AWFCO

M-05	Dryer Cylinder Rotation	Motor operation	AWFCO
M-18	Product Discharge operational	Motor operation	AWFCO

The Respondents shall operate continuous emissions monitoring for the measurement of carbon monoxide (CO) during the shakedown period.

~~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~~ sixty (60~~90~~) 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 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. 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~~boiler~~, and a description of any corrective actions taken as part of the combustion adjustment.

~~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~~sixty (~~120~~60) 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~~conduct a fuel specification analysis of the process vent gas for mercury and document that it does not exceed the maximum concentration of 40 micrograms / cubic meter of mercury in accordance with the process specified in the ~~approved~~ CDT Plan.

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 for all waste streams processed by the oil reclamation unit ~~, copies of the relevant waste approval documents, and manifests~~ for the previous six month 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 ~~where~~ which there were exceedances of the ~~one minute and hourly rolling averages required under Paragraph 72.A.7.~~operating parameters specified in Paragraphs 71.A.3 and 71.A.6 of this CAFO when the dryer feed is on.

c. The initial Report shall include documentation showing the installation dates of the equipment required by Paragraphs 71.A.4~~,~~ and ~~-~~A.5~~, 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, 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, Subparts I through O and AA through CC that are appropriate for the operation of the Reconfigured 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]~~.~~, except that with regard to continuous monitoring required by 40 C.F.R. § 264(a)(i) and (a)(2), only continuous monitoring of combustion temperature shall be required.

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

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

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~~71.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 ~~two~~ three and one-half years (42~~30~~ months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and ~~have~~ 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 ~~applicable~~ appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and Part 63, Subpart~~s 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~~C. ~~Trial Burn~~Compliance Demonstration Test

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.~~compliance demonstration test (CDT) in accordance with the plan for the CDT dated September _____, 2012, approved by EPA (CDT Plan).

2. Within ~~one hundred twenty~~sixty (~~120~~60) 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.~~ Quality assurance project plan (QAPP) for the CDT. The QAPP shall be prepared in accordance with EPA guidance document, Quick Reference Guide, Test Program Planning for HWC Units, dated August 2012.

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 CDT ~~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).~~ installation of the TOU pursuant to Paragraph 71.A.5 of this CAFO.

~~5~~4. 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~~CDT. 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 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. 120 7(j), and 63. 121 0(d), w~~Within ninety (90) days from completion of the ~~trial burn and the CMS performance test~~CDT, the Respondents shall submit a ~~Notification of Compliance (NOC)~~CDT report to TCEQ and EPA documenting compliance with the ~~emission standards and continuous monitoring system requirements~~CDT Plan~~,~~ and identifying operating parameters ~~limits under 40 C.F.R. § 63.1209~~ identified in the CDT. All data collected during the ~~trial burn and the CMS performance test~~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 TCEQ and EPA along with the NOC~~in the report.

~~8~~6. As of the date of the submission of the ~~NOC~~CDT report, the Respondent shall comply with all operating requirements of the ~~NOC~~CDT report~~, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219~~.

~~9~~7. The failure to timely submit ~~an NOC~~a CDT report to TCEQ and EPA within ninety (90) days from completion of the ~~trial burn and the CMS performance test~~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).

~~F~~D. 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 petroleum refining, production, and transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable ~~is oil-bearing hazardous waste~~are materials generated from ~~facilities who~~processes meeting the definition ~~se~~ 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,	213112	Support Activities for Oil and Gas

	NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)		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.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).

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 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 the issued RCRA permit.

~~G~~E. 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~~respond to any Notice of Deficiency (NOD), with a copy to EPA, within ~~thirty (30) days of receipt of the NOD~~the time period specified by the TCEQ. In the event that the Respondents fail to submit a timely and ~~good-faith approvable~~ complete 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]~~unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

~~H~~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 ~~applicable~~ appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC, and Part 63, Subpart~~s A and~~ EEE.

2. The Respondents may seek relief under the provisions of Section IV.F of ~~the~~ 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.

~~I~~G. 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~~ 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, 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 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 final permit, except as provided by the CDT Plan. 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~~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 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

72. 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 ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

73. 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. 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.

75. 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).

76. 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

77. 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

78. 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.

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.K and 77.L.

D. If applicable, 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. If applicable, 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 submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

I. Within _____ 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.K and 77.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. If applicable, a copy of the fugitive emission program required by Paragraph 77.D;

2. If applicable, a copy of the notice required by Paragraph 77.E;

3. Documentation showing compliance with Paragraphs 77.F, 77.G, and 77.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

79. 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 71.A.3, 71.A.6, 71.A.8, 71.A.9, 71.C.1, 71.C.5, 71.D.1, and 71.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 71.A.4, 71.A.5, and 71.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.

80. 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 73 herein. Interest and late charges shall be paid as stated in Paragraphs 75 - 76 herein.

81. 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

82. 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

83. 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.

84. 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.

85. 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).

86. 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

87. 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.

88. 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.

89. 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.

90. 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.

91. 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

92. 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

93. 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

94. 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.

95. 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.

96. 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.

97. 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.

98. 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

99. 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

100. 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

101. 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

102. 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

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

_____

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CONFIDENTIAL SETTLEMENT COMMUNICATION
EPA REVISIONS (CLEAN) – 9-6-12

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).

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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 USET or 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].

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

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

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. 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."

58. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion.

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."

60. 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. 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. 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

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.

64. "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."

65. 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.

66. The roll-off boxes identified in Paragraph 65 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.

67. "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.*"

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

69. 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".

70. 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

71. 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 transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable is oil-bearing hazardous waste from 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 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 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.

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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 petroleum refining, production, and transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170. Also acceptable is oil-bearing hazardous waste from 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 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 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 the issued 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 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

72. 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 ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

73. 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:

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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. 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.

75. 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).

76. 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.

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B. PARTIES BOUND

77. 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

78. 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.

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.K and 77.L.

D. If applicable, 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. If applicable, 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 submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

I. Within _____ 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.K and 77.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. If applicable, a copy of the fugitive emission program required by Paragraph 77.D;

2. If applicable, a copy of the notice required by Paragraph 77.E;

3. Documentation showing compliance with Paragraphs 77.F, 77.G, and 77.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

79. 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 71.A.3, 71.A.6, 71.A.8, 71.A.9, 71.C.1, 71.C.5, 71.D.1, and 71.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 71.A.4, 71.A.5, and 71.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

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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.

80. 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 73 herein. Interest and late charges shall be paid as stated in Paragraphs 75 - 76 herein.

81. 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

82. 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

83. 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.

84. 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.

85. 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).

86. 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

87. 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.

88. 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.

89. 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.

90. 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.

91. 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

92. 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

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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

93. 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

94. 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.

95. 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.

96. 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

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United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

97. 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.

98. 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

99. 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

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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

100. 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

101. 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

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

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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

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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
EPA REVISIONS (MARKED UP) – 9-6-12

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).

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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~~7~~) [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~~8~~) [40 C.F.R. § 260.10] as "the person responsible for the overall operation of a facility" ~~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, 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~~thereof~~)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Road~~Route~~ 69, Robstown, TX 78380, EPA I.D. No. TX~~S~~D069452340, 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~~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 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~~117~~) [40 C.F.R. § 260.10] in the tanks identified in Paragraph 20.

33. 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) 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].

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~~3~~. Processing (treatment) is defined in 30 T.A.C. § 335.1(122~~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.

42~~3~~. 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.").

44. The TDU uses heat from an indirect heated rotary dryer to separate the organic constituents ~~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. A portion of the TDU's recirculating nitrogen carrier gas, along with non-condensable gases, is vented, filtered, and then ~~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. The separation of the organic constituents~~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. 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 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~~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. A portion of the TDU's recirculating nitrogen carrier gas, along with non-condensable gases, is vented, filtered, and then~~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.

54~~55~~. Processing (treatment) is defined in 30 T.A.C. § 335.1(122~~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.

55~~54~~. 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. 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."

58. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion.

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."

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60. 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. 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. 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

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.

64. "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."

64~~5~~. 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.

66~~5~~. The roll-off boxes identified in Paragraph 65~~4~~ 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~~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.*"

68~~67~~. The roll-off boxes identified in Paragraph 65~~64~~ contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

~~68~~69. 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".

70~~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~~0~~1. 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 transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable is 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 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).

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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

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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 petroleum refining, production, and transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170. Also acceptable is 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 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 the issued 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.

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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 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

72~~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 ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

73~~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:

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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

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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.

75~~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).

76~~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.

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B. PARTIES BOUND

77~~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.

C. ADDITIONAL REQUIREMENTS

78~~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, Subpart 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.K and 77.L.

D. If applicable, 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. If applicable, 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 ~~(e.g., covered by a lid that is gasketed and latched)~~ 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 submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

I. Within _____ 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.K and 77.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. If applicable, a copy of the fugitive emission program required by Paragraph 77.D;

2. If applicable, a copy of the notice required by Paragraph 77.E;

3. Documentation showing compliance with Paragraphs 77.F, 77.G, and 77.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

79~~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 71~~70~~.A.3, 71~~70~~.A.6, 71~~70~~.A.8, ~~70~~71.A.9, 71~~70~~.C.1, 71~~70~~.C.5, ~~70~~71.D.1, and 71~~70~~.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 71~~70~~.A.4, 71~~70~~.A.5, and 71~~70~~.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.

80~~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 73~~72~~ herein. Interest and late charges shall be paid as stated in Paragraphs 75~~74~~ - 76~~75~~ herein.

81~~80~~. 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

82~~81~~. 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

83~~82~~. 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.

84~~83~~. 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.

85~~84~~. 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).

86~~85~~. 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

87~~86~~. 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.

88~~87~~. 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.

8988. 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.

9089. 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.

9190. 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

92~~91~~. 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

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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

9392. 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

9493. 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.

9594. 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.

9695. 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.

9796. 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.

9897. 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

9998. 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

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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

100~~99~~. 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

101~~100~~. 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

102~~101~~. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

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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

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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

_____

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USET/TD*X
DRAFT – 7/13/12

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).

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~~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).

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~~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)].

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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.~~

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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

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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 ~~31~~13 tons per ~~day~~hour based on an hourly rolling average;

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~~1500 ppm,
2. maximum mercury concentration ~~in~~ of ~~260~~50 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.

~~i~~

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 ~~1~~320°F based on an hourly rolling average~~with a 51-minute delay~~ when the dryer feed is on;

f. minimum combustion chamber temperature of 1400°F based on an hourly rolling average~~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%

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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 and the HEPA filter shall be confirmed as functioning with a measurable pressure drop once per operating shift while the dryer feed is on.

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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. Ooxygen 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 1320°F based on an hourly rolling averagewith 51-minute delay;

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d. temperature in the combustion zone of the dryer's external furnace less than 1,400°F based on an hourly rolling averagewith 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 ~~31~~013 ton/~~day~~hr based on an ~~twenty-four-hour~~hourly rolling average;, and

h. process vent flow rate exceeding 180 scfm based on a one-hour rolling average.

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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) days~~one 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 of~~Beginning on the ~~effective~~ date of ~~this CAFO~~initial 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 based on an hourly rolling average in the TOU combustion chamber when the feed to the dryer is on; ~~and~~

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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 an hourly rolling average, 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.

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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 heaters63.1209(a). Within sixty (60) days of the initial operation of the reconfigured TDU, Tthe 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 andor 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. These 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.

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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~~

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~~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

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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

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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~~e~~d 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, Subparts~~ 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, 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 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"

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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

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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).

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~~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

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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

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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

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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
EPA REVISIONS (CLEAN) – 8-16-12

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).

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".

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[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(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 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) [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(117) [40 C.F.R. § 260.10] in the tanks identified in Paragraph 20.

33. 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) 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].

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) [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. 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.").

43. 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.

44. 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. 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. 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

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 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.

54. 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.")

55. 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.

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. 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."

58. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion.

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."

60. 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. 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. 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

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.

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.

65. The roll-off boxes identified in Paragraph 64 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.

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.*"

67. The roll-off boxes identified in Paragraph 64 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

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".

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

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 transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable is 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 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 petroleum refining, production, and transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170. Also acceptable is 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	213112	Support Activities for Oil and Gas Operations

	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 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 the issued 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

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 ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

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.

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.

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).

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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

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.

C. ADDITIONAL REQUIREMENTS

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, Subpart 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.K and 77.L.

D. If applicable, 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. If applicable, 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 (e.g., covered by a lid that is gasketed and latched) 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 submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

I. Within _____ 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.K and 77.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. If applicable, a copy of the fugitive emission program required by Paragraph 77.D;

2. If applicable, a copy of the notice required by Paragraph 77.E;

3. Documentation showing compliance with Paragraphs 77.F, 77.G, and 77.H.

K. The reports identified in this Section 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. 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

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 70.A.3, 70.A.6, 70.A.8, 70.A.9, 70.C.1, 70.C.5, 70.D.1, and 70.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 70.A.4, 70.A.5, and 70.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.

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 72 herein. Interest and late charges shall be paid as stated in Paragraphs 74 - 75 herein.

80. 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

81. 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

82. 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. 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.

84. 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).

85. 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

86. 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.

87. 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.

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.

89. 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.

90. 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

91. 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

92. 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

93. 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.

94. 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

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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.

95. 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.

96. 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.

97. 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.

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J. INDEMNIFICATION OF EPA

98. 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. 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. 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

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

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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

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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

_____

USET/TD*X
DRAFT – 7/13/12

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).

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~~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).

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~~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)].

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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.~~

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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

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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 31013 tons per day hour based on an hourly rolling average;

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 40001500 ppm,
2. maximum mercury concentration in of 26050 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.

;

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 whileen 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 1320°F based on an hourly rolling averagewith a 51-minute delay when the dryer feed is on;

f. minimum combustion chamber temperature of 1400°F based on an hourly rolling averagewith 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%

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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 and the HEPA filter shall be confirmed as functioning with a measurable pressure drop once per operating shift 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 1320°F based on an hourly rolling average~~with 51-minute delay~~;

d. temperature in the combustion zone of the dryer's external furnace less than 1,400°F based on an hourly rolling average~~with a 5-minute delay~~;

e. loss of operation of the gas treatment system carrier gas recirculation blower; ~~and~~

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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 ~~31~~013 ton/~~day~~hr based on an ~~twenty-four-hour~~hourly rolling average;. and

h. process vent flow rate exceeding 180 scfm based on a one-hour rolling average.

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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) days~~one 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 of~~Beginning on the ~~effective~~ date of ~~this CAFO~~initial 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 based on an hourly rolling average in the TOU combustion chamber when the feed to the dryer is on; ~~and~~

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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 an hourly rolling average, 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.

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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 heaters63.1209(a). Within sixty (60) days of the initial operation of the reconfigured TDU, Tthe 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 andor 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. These 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.

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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~~

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~~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

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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

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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, Subparts~~ 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, 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 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"

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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

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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. 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).

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~~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

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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

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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
EPA REVISIONS (CLEAN) – 8-16-12

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).

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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 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 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) [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(117) [40 C.F.R. § 260.10] in the tanks identified in Paragraph 20.

33. 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) 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].

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) [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. 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.").

43. 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.

44. 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. 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. 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

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 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.

54. 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.")

55. 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.

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. 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."

58. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion.

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."

60. 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. 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. 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

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.

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.

65. The roll-off boxes identified in Paragraph 64 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.

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.*"

67. The roll-off boxes identified in Paragraph 64 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

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".

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

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 transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable is 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 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 petroleum refining, production, and transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170. Also acceptable is 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	213112	Support Activities for Oil and Gas Operations

	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 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 the issued 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

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 ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

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.

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.

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).

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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

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.

C. ADDITIONAL REQUIREMENTS

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, Subpart 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.K and 77.L.

D. If applicable, 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. If applicable, 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 (e.g., covered by a lid that is gasketed and latched) 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 submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

I. Within _____ 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.K and 77.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. If applicable, a copy of the fugitive emission program required by Paragraph 77.D;

2. If applicable, a copy of the notice required by Paragraph 77.E;

3. Documentation showing compliance with Paragraphs 77.F, 77.G, and 77.H.

K. The reports identified in this Section 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. 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

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 70.A.3, 70.A.6, 70.A.8, 70.A.9, 70.C.1, 70.C.5, 70.D.1, and 70.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 70.A.4, 70.A.5, and 70.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.

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 72 herein. Interest and late charges shall be paid as stated in Paragraphs 74 - 75 herein.

80. 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

81. 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

82. 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. 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.

84. 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).

85. 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

86. 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.

87. 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.

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.

89. 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.

90. 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

91. 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

92. 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

93. 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.

94. 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.

95. 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.

96. 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.

97. 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.

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J. INDEMNIFICATION OF EPA

98. 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. 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. 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

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

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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

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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

FILED
2012 OCT -4 AM 9:20
REGIONAL HEARING CLERK
EPA REGION VI

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(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].

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

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

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.

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".

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 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 Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) 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 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 for either stack, the analysis shall include speciation of the gas. This information shall be included in the report required in Paragraph 69.A.5.g below.

g. 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.

h. Subsequent tune-ups shall be conducted annually 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)(ii) and (iv) 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).

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.

9. 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).

10. 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)(ii) and (iv) 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 B 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).

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 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 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 thirty (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 stream profiles, 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).

c. All exceedances of the Reconfigured TDU Compliance Standards and the AWFCO requirements established in accordance with Paragraph 69.C.9.

d. 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.

e. Documentation showing the installation of the TOU required by Paragraph 69.A.8, and the additional AWFCO requirements required by Appendix 1, Table B (Paragraph 69.A.10).

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. The feedstock limitations applicable to the operation of the oil reclamation unit under 40 C.F.R. § 261.6(a)(3)(iv)(C) set forth in Paragraph 69.D;

b. The investigation, recordkeeping, testing, and reporting requirements of 40 C.F.R. § 63.1206(c)(3) (v), (vi) and (vii);

c. Appropriate recordkeeping and reporting requirements; and

d. 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 C 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 standard 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.8 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 immediately cease processing hazardous waste in the Reconfigured TDU. 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 standard 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", 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. Subject to Paragraph 69.C.7 of this CAFO, 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).

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

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 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.6) 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 plans 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:

ED_002427B_00007415-00028

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 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.

B. Within thirty (30) days of the effective date of the CAFO, the Respondents shall submit to EPA a certification that the following equipment in the oil reclamation unit and the TDU is not 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.

This certification shall be submitted in accordance with Paragraphs 76.H and 76.I.

C. 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.

D. 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).

E. 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).

F. Within ninety (90) days after the reconfiguration of the TDU pursuant to Paragraph 69.A.8 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 ninety (90) days of completion of the performance tests. The performance tests results shall be submitted in accordance with Paragraphs 76.H and 76.I.

G. Within 210 days of the effective date of the CAFO, the Respondents shall submit a written report to EPA showing compliance with Paragraphs 76.C, 76.D, and 76.E.

H. The certification and report 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 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. The certification and report 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.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), 69A.8, and 69.A.11

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.H (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 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.

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 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.

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

FOR THE RESPONDENT:

Date: 9/27/12

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: September 26, 2012

Carl R. Palmer
TD*X Associates L.P.

FOR THE COMPLAINANT:

Date: 10·03·12

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: 10/4/12

Patrick Rankin
Regional Judicial Officer

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
TT-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)[2]
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)[3]
M-100	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 Concentration	[Hg] < 50 ppm/Bin	Blending Protocols & Documentation[4]
	Maximum TDU Feed Organic Halide Concentration	[Total Organic Halides] < 1,500 ppm/Bin	Blending Protocols & Documentation

[1] Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

[2] Previous six 1-minute readings are summed and divided by six.

[3] 40 C.F.R. §§ 63.1209(b)(5).

[4] See Paragraph 69.A.3 of the CAFO.

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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, Maximum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS[5], 6-min RA[6]
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[7]
KY-110	TOU, Minimum Residence Time (Calculated from Purge Vent Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds	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	AWFCO: CPMS, 60-sec delay
M-121	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	Maintain Temperature < 120°F	AWFCO: CPMS, HRA

[5] Continuous Process Monitoring System – See Paragraph 69.I of the CAFO.

[6] Previous six 1-minute readings are summed and divided by six.

[7] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

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	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	[Hg] < 50 ppm/Bin	Blending Protocols & Documentation[8], Feed Stream Analysis Plan (if applicable)[9]
	Maximum TDU Feed Organic Halide Concentration	[Total Organic Halides] < 1,500 ppm/Bin	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Semi-Volatile Metals Concentration[10]	N/A	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Low-Volatile Metals Concentration[11]	N/A	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)

[8] See Paragraph 69.A.3 of the CAFO.

[9] See Paragraph 69.A.11 of the CAFO.

[10] Semi-volatile metals means a combination of cadmium and lead.

[11] Low-volatile metals means a combination of Arsenic, Beryllium, and Chromium.

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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, Maximum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS[12], 6-min RA[13]
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 Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds	AWFCO: CPMS, HRA
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	AWFCO: CPMS, 60-sec time delay
M-121	Minimum Percent Excess Air, Operation of Purge Vent Injector Air Supply	Purge Vent Air Supply > 20% Excess Air	AWFCO: CPMS, Tuning of Combustion Airflow

[12] Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

[13] Previous six 1-minute readings are summed and divided by six.

[14] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

TE-28	Maximum Condenser System Exhaust Temperature	OPL Established @ < 3-run Average 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 Concentration	[Hg] < 50 ppm/Bin	Blending Protocols & Documentation[15], Feed Stream Analysis Plan (if applicable)[16]
	Maximum TDU Feed Organic Halide Concentration	OPL Established as Measured Ratio[17]	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Semi-Volatile Metals Concentration[18]	OPL Established as Measured Ratio[19]	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Low-Volatile Metals Concentration[20]	OPL Established as Measured Ratio[21]	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)

[15] See Paragraph 69.A.3 of the CAFO.

[16] See Paragraph 69.A.11 of the CAFO.

[17] Maximum TDU Feed Concentration established as a measured ratio (not to exceed 4000 ppm/bin) from emissions data collected during CDT. See plan example calculations.

[18] Semi-volatile metals means a combination of cadmium and lead.

[19] Maximum TDU Feed Concentration established as measured ration from emissions data collected during CDT. See plan example calculations.

[20] Low-volatile metals means a combination of Arsenic, Beryllium, and Chromium.

[21] Maximum TDU Feed Concentration established as measured ratio from emissions data collected during CDT. See plan example calculations.

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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 4th day of October, 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 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 – 7007 0710 0002 1385 1491

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 – 7007 0710 0002 1385 1507

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

Evan L Pearson

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., TD*X ASSOCIATES LP, TD*X ASSOCIATES, LLC, and ENVIRONMENTAL THERMAL TECHNOLOGIES, LLC,	)	DOCKET NO. RCRA-06-2012-0945
RESPONDENTS	)	

COMPLAINT, COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY FOR HEARING

The Complainant, the Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency, Region 6 (EPA), issues this Complaint, Compliance Order, and Notice of Opportunity for Hearing (Complaint) to US Ecology Texas, Inc. (USET), TD*X Associates LP, TD*X Associates, LLC, and Environmental Thermal Technologies, LLC.

I. STATEMENT OF AUTHORITY

This Complaint is issued pursuant to Section 3008(a) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a). Section 3008(a) of RCRA provides that whenever on the basis of any information the Administrator of the EPA determines that any person has violated or is violating any requirement of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, the Administrator may issue an order assessing a civil penalty for any past or current violation or requiring compliance, or both. The requirements of Subtitle C include the

requirements of the authorized program in a State which has been authorized to carry out a hazardous waste program under Section 3006 of RCRA, 42 U.S.C. § 6926. On December 12, 1984, EPA granted final authorization to the State of Texas for its base RCRA program, effective December 26, 1984 (49 *Fed. Reg.* 48300); see also 40 C.F.R. § 272.2201), and there have been subsequent authorized revisions to said base program. In Texas, the federal hazardous waste program is managed by the Texas Commission on Environmental Quality (TCEQ), pursuant to the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Ann. Chapter 361, and the rules and regulations promulgated thereunder at 30 Texas Administrative Code (T.A.C.) Chapter 335. For ease of reference, the Texas regulations are cited below followed by the applicable federal hazardous waste regulation.

The Director, Compliance Assurance and Enforcement Division, EPA Region 6, is the person to whom the authority has been delegated to issue Complaints in the States of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

II. NOTICE TO THE STATE

Notice of this action has been given to the State of Texas prior to the issuance of this Complaint pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

III. PRELIMINARY ALLEGATIONS

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

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

3. TD*X Associates, LLC is a limited liability corporation incorporated under the laws of the State of Texas.

4. TD*X Associates LLC is a general partner of TD*X Associates LP.

5. Environmental Thermal Technologies, LLC is a Nevada limited liability company.

6. Environmental Thermal Technologies, LLC is a general partner of TD*X Associates LP.

7. "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."

8. 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).

9. The Respondent TD*X Associates LP 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).

10. The Respondent TD*X Associates, LLC 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 Environmental Thermal Technologies, LLC 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. Under Texas law, the general partners of a limited partnership are joint and severally liable for the debts and obligations of the limited partnership. *See* Texas Business Organizations Code § 153.152.

13. All references to Respondent TD*X Associates LP (Respondent TD*X) include Respondents TD*X Associates, LLC and Environmental Thermal Technologies, LLC.

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14. "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."

15. "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".

16. "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. "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)."

18. 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 ID No. TXD069452340, Permit No. HW-50052-001.

19. The TSD facility identified in Paragraph 18 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

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

21. An oil reclamation operation is located on the Respondent USET's TSD facility identified in Paragraph 18.

22. 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 at the oil reclamation unit.

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

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

IV. VIOLATIONS

COUNT ONE – PROCESSING HAZARDOUS WASTE WITHOUT A PERMIT OR INTERIM STATUS

25. Paragraphs 1 through 24 are realleged and incorporated by reference.

26. 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.

27. "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.*"

28. "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.

29. 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].

30. 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)].

31. Recyclable materials destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

32. 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.

33. On various dates after June 15, 2008, certain recyclable materials were processed in the tanks identified in Paragraph 22.

34. The recyclable materials identified in Paragraph 33 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."

35. 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 22.

36. To date, neither the Respondent USET 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 22.

37. 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

38. Paragraphs 1 through 37 are realleged and incorporated by reference.

39. 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.

40. "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.*"

41. "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".

42. 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].

43. 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)].

44. Recyclable materials destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

45. 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."

46. 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.

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.").

48. 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 along with non-condensable gases, is vented, filtered, and then injected into the combustion chamber of the TDU, where it is burned.

49. 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].

50. 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.

51. 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

52. Paragraphs 1 through 51 are realleged and incorporated by reference.

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.

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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.*"

55. 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].

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

57. On various dates after June 15, 2008, hazardous wastes were fed into the TDU.

58. 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 along with non-condensable gases, is vented, filtered, and then injected into the combustion chamber of the TDU, where it is burned.

59. 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.

60. 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.")

61. 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].

62. 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."

63. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion.

64. 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."

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65. 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.

66. 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.

67. 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

68. Paragraphs 1 through 67 are realleged and incorporated by reference.

69. 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.

70. "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."

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

72. The roll-off boxes identified in Paragraph 71 were later sent to the oil reclamation unit for processing.

73. The roll-off boxes identified in Paragraph 71 were "stored" as that term is defined by 30 T.A.C. § 335.1(143) [40 C.F.R. § 260.10].

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.*"

75. The roll-off boxes identified in Paragraph 71 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

76. 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".

77. 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.

V. PROPOSED CIVIL PENALTY

78. The proposed civil penalty has been determined in accordance with Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), which authorizes EPA to assess a civil penalty of up to Thirty-Seven Thousand, Five Hundred Dollars ($37,500)[2] for each offense. Based on the facts presented above and EPA's "RCRA Civil Penalty Policy" dated June 2003 (a copy of which is enclosed with this Complaint), which requires the Complainant to consider the seriousness of the

[2] The amount of penalty that can be assessed under Section 3008 of RCRA was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to $27,500 for violations occurring between January 30, 1997 and March 15, 2004, to $32,500 for violations which occurred between March 15, 2004 and January 12, 2009, and to $37,500 for violations which occurred after January 12, 2009.

violation and any good faith efforts to comply with the applicable requirements, the Complainant proposes that the Respondents jointly be assessed a civil penalty of **One Million, Three Hundred Eighty-Nine Thousand, Eight Hundred Nine Dollars ($1,389,809)** (Counts 1 – 3).[3] In addition, the Complainant proposes that Respondent USET be assessed a civil penalty of **Two Hundred Twelve Thousand, Seven Hundred Ninety-Six Dollars ($212,796)** for Count 4. Attached to this Complaint are penalty calculation worksheets which explains the reasoning behind the proposed penalty, as required by 40 C.F.R. § 22.14(a)(4)(i).

VI. RCRA COMPLIANCE ORDER

79. 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. Immediately upon the Compliance Order becoming final, cease processing (treating), thermal processing (thermal processing), or otherwise placing hazardous waste, including "recyclable materials" as defined in 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)], into the TDU until a RCRA permit has been issued.

B. Immediately upon the Compliance Order becoming final, cease using the following tanks for processing (treating) hazardous waste until a RCRA permit has been issued:

1. Shaker Tank (T-30);
2. Mix Tanks (T-31, T-32, and T-33);
3. Centrifuge; and
4. Surge Tank (T-34).

C. Within fifteen (15) days after the Compliance Order becomes final, notify EPA whether Paragraphs 79.A and B have been met.

[3] See the footnotes on the attached penalty calculations regarding the proposed penalty for Count Two and economic benefit calculations.

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D. Within thirty (30) days after the Compliance Order becomes final, submit a closure plan for the TDU to TCEQ for approval, with a copy submitted to EPA. The closure plan shall meet the applicable requirements of 30 T.A.C. §§ 335.152(a)(5) and (13) [40 C.F.R. Part 264, Subpart G and 40 C.F.R. § 264.351]. The Respondents shall implement the submitted plan as approved or modified by TCEQ according to the schedule set by TCEQ.

E. Within thirty (30) days after the Compliance Order becomes final, submit a closure plan for the tanks identified in Paragraph 79.B to TCEQ for approval, with a copy submitted to EPA. The closure plan shall meet the applicable requirements of 30 T.A.C. §§ 335.152(a)(5) and (8) [40 C.F.R. Part 264, Subpart G, and 40 C.F.R. § 264.197]. The Respondents shall implement the submitted plan as approved or modified by TCEQ according to the schedule set by TCEQ.

F. Include the following certification in your notice required under Paragraph 79.C:

"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."

G. All notifications and documents required by this Compliance Order to be submitted to EPA shall be sent to the following:

Mark Potts, Associate Director
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attention: Eva Steele (6EN-HE)

VII. PENALTY/RESERVATION OF RIGHTS

If you fail to take the required actions within the time specified in this Compliance Order, you may be liable for a penalty of up to Thirty-Seven Thousand, Five Hundred Dollars ($37,500) for each day of continued noncompliance pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), and may be subject to further enforcement action as may be necessary to achieve compliance with Subtitle C of RCRA.[4]

Notwithstanding any other provision of this Complaint, an enforcement action may be brought against any Respondent pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority if EPA finds that the handling, storage, treatment, transportation or disposal of solid waste or hazardous waste at the Facility presents an imminent and substantial endangerment to human health or the environment.

VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

If a Respondent wishes to contest any material fact set forth in the Complaint, contends that the proposed penalty or the compliance order is inappropriate, or contends it is entitled to a judgment as a matter of law, it shall file an original and one copy of a written answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after service of said Complaint, and serve a copy on all other parties. A copy of the Answer shall also be sent to:

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
U.S. EPA - Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

[4] The amount of penalty that can be assessed under Section 3008(c) of RCRA was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to $27,500 per day of violation for violations occurring between January 30, 1997 and March 15, 2004, to $32,500 per day of violation for violations which occurred between March 15, 2004 and January 12, 2009, and to $37,500 per day of violation occurring after January 12, 2009.

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The Answer should clearly and directly admit, deny, or explain each of the factual allegation contained in this Complaint with regard to which the Respondent has knowledge. Where the Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. Hearings held on the assessment of the civil penalties will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice, codified at 40 C.F.R. Part 22 (a copy of which is enclosed with this Complaint).

If an Answer to this Compliance Order is not filed with the Regional Hearing Clerk within thirty (30) days of receipt, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to a hearing. Pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) and 40 C.F.R. § 22.37(b), the Compliance Order becomes final within thirty (30) days of receipt unless the Respondent requests a hearing.

The Regional Hearing Clerk's address is:

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

IX. SETTLEMENT CONFERENCE

Whether or not a Respondent requests a hearing, it may confer with the Complainant concerning settlement. EPA encourages settlement consistent with the provisions and objectives of RCRA and applicable regulations. A request for a settlement conference does not extend the

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thirty (30) day period during which the written Answer and a request for hearing must be submitted. The settlement conference procedure may be pursued as an alternative to and simultaneous with the formal hearing procedures. The Respondents may appear at the settlement conference and/or be represented by counsel.

Any settlement reached by the parties shall be finalized upon the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region 6, in accordance with 40 C.F.R. § 22.18. The issuance of a Consent Agreement and Final Order shall constitute a waiver of the Respondent's right to request a hearing on any matter stipulated to therein.

To explore the possibility of settlement in this matter, please address correspondence to Evan L. Pearson, Senior Enforcement Counsel, at the address listed above or by telephone call (214) 665-8074.

Dated at Dallas, Texas on this _____ day of _____, 2012.

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

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U.S. ECOLOGY TEXAS, INC. , TD*X ASSOCIATES, L.P., TD*X ASSOCIATES, LLC, AND ENVIRONMENTAL THERMAL TECHNOLOGIES, LLC ROBSTOWN, TEXAS

RCRA CIVIL PENALTY SUMMARY

Count One – Processing Hazardous Waste without a Permit 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)]	$	395,267
Count Two – Processing of Hazardous Waste without a Permit 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)]	$	Included in Count Three[5]
Count Three – Processing of Hazardous Waste without a Permit 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)]	$	994,542[6]
Count Four – Storage of Hazardous Waste without a Permit 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)] (Respondent USET only)	$	212,796
PROPOSED PENALTY	**$**	**1,602,605**

[5] See Footnotes 7 and 8.

[6] See Footnote 9.

RCRA PENALTY CALCULATION WORKSHEET

Company Names: U.S. Ecology Texas, Inc., TD*X Associates, L.P., TD*X Associates, LLC, and Environmental Thermal Technologies, LLC
Address: Robstown, Texas

Requirement Violated: Count One - Processing Hazardous Waste without a Permit
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)]

1.	Gravity based penalty from matrix (midpoint)	$ 13,455
	(a) Potential for Harm	Moderate
	(b) Extent of Deviation	Major
2.	Select an amount from the appropriate multi-day matrix cell	$ 1,845
3.	Multiply line 2 by number of days of violation minus 1 [180 days - 1 day = 179 days. 179 days x $1,845]	$ 330,225
4.	Add line 1 and line 3	$ 343,710
5.	Percent increase/decrease for good faith	0
6.	Percent increase/decrease for willfulness/negligence	0
7.	Percent increase for history of noncompliance	15%
8.	Total lines 5 thru 7	15%
9.	Multiply line 4 by line 8	$ 51,557
10.	Calculate economic benefit	N/A
11.	Add lines 4, 9, and 10 for proposed penalty amount To be sought at hearing	$ 395,267

RCRA PENALTY CALCULATION WORKSHEET

Company Names: U.S. Ecology Texas, Inc., TD*X Associates, L.P., TD*X Associates, LLC, and Environmental Thermal Technologies, LLC

Address: Robstown, Texas

Requirement Violated: Count Two - Processing of Hazardous Waste without a Permit 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)]

1.	Gravity based penalty from matrix (midpoint)	$ 32,915
	(a) Potential for Harm	Major
	(b) Extent of Deviation	Major
2.	Select an amount from the appropriate multi-day matrix cell	$ 4,255
3.	Multiply line 2 by number of days of violation minus 1 [180 days - 1 day = 179 days. 179 days x $4,255]	$ 761,645
4.	Add line 1 and line 3	$ 794,560
5.	Percent increase/decrease for good faith	0
6.	Percent increase/decrease for willfulness/negligence	0
7.	Percent increase for history of noncompliance	15%
8.	Total lines 5 thru 7	15%
9.	Multiply line 4 by line 8	$ 119,184
10.	Calculate economic benefit	$ 80,798[7]
11.	Add lines 4, 9, and 10 for proposed penalty amount To be sought at hearing	Included in Count Three[8]

[7] Economic Benefit for Avoided Cost - $303,062. If it turns out that the Respondents have no plans to apply for a permit and conduct testing, the Complainant reserves the right to substitute this amount for the economic benefit, which would increase Count Two from $994,542 to $1,216,806.

[8] If the Respondents are found liable for both Counts Two and Three, then the Complainant will not seek a penalty for Count Two. If the Respondent is found liable on Count Two, but not Count Three, the Complainant will seek a penalty of either $994,542 or $1,216,806 for Count Two, as appropriate.

RCRA PENALTY CALCULATION WORKSHEET

Company Names: U.S. Ecology Texas, Inc., TD*X Associates, L.P., TD*X Associates, LLC, and Environmental Thermal Technologies, LLC
Address: Robstown, Texas

Requirement Violated: Count Three - Processing of Hazardous Waste without a Permit 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)]

1.	Gravity based penalty from matrix (midpoint)	$ 32,915
	(a) Potential for Harm	Major
	(b) Extent of Deviation	Major
2.	Select an amount from the appropriate multi-day matrix cell	$ 4,255
3.	Multiply line 2 by number of days of violation minus 1 [180 days - 1 day = 179 days. 179 days x $4,255]	$ 761,645
4.	Add line 1 and line 3	$ 794,560
5.	Percent increase/decrease for good faith	0
6.	Percent increase/decrease for willfulness/negligence	0
7.	Percent increase for history of noncompliance	15%
8.	Total lines 5 thru 7	15%
9.	Multiply line 4 by line 8	$ 119,184
10.	Calculate economic benefit	$ 80,798[9]
11.	Add lines 4, 9, and 10 for proposed penalty amount To be sought at hearing	$ 994,542

[9] Economic Benefit for Avoided Cost - $303,062. If it turns out that the Respondents have no plans to apply for a permit and conduct testing, the Complainant reserves the right to substitute this amount for the economic benefit, which would increase Count Three from $994,542 to $1,216,806.

RCRA PENALTY CALCULATION WORKSHEET

Company Names: U.S. Ecology Texas, Inc.
Address: Robstown, Texas

Requirement Violated: Count Four - Storage of Hazardous Waste without a Permit 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)]

1.	Gravity based penalty from matrix (midpoint)	$ 13,455
	(a) Potential for Harm	Moderate
	(b) Extent of Deviation	Major
2.	Select an amount from the appropriate multi-day matrix cell	$ 1,845
3.	Multiply line 2 by number of days of violation minus 1 [March 9, 2010 – June 11, 2010 – 94 days - 1 day = 93 days. 93 days x $4,255]	$ 171,585
4.	Add line 1 and line 3	$ 185,040
5.	Percent increase/decrease for good faith	0
6.	Percent increase/decrease for willfulness/negligence	0
7.	Percent increase for history of noncompliance	15%
8.	Total lines 5 thru 7	15%
9.	Multiply line 4 by line 8	$ 27,756
10.	Calculate economic benefit	N/A
11.	Add lines 4, 9, and 10 for proposed penalty amount To be sought at hearing	$ 212,796

Run Name =	**Run 1**
Present Values as of Noncompliance Date (NCD).	15-Jun-2008
A) On-Time Capital & One-Time Costs	$223,488
B) Delay Capital & One-Time Costs	$163,905
C) Avoided Annually Recurring Costs	$0
D) Initial Economic Benefit (A-B+C)	$59,583
E) Final Econ. Ben. at Penalty Payment Date,	
31-Oct-2012	**$80,798**
C-Corporation w/ TX tax rates	
Discount/Compound Rate	7.2%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	31-Oct-2012
Capital Investment:	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
One-Time, Nondepreciable Expenditure:	
Cost Estimate	$341,507
Cost Estimate Date	04-Sep-2012
Cost Index for Inflation	PCI
Tax Deductible?	y
Annually Recurring Costs:	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
User-Customized Specific Cost Estimates:	N/A
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

Run Name =	**Run 2**
Present Values as of Noncompliance Date (NCD),	15-Jun-2008
A) On-Time Capital & One-Time Costs	$223,488
B) Delay Capital & One-Time Costs	$0
C) Avoided Annually Recurring Costs	$0
D) Initial Economic Benefit (A-B+C)	$223,488
E) Final Econ. Ben. at Penalty Payment Date,	
31-Oct-2012	**$303,062**
C-Corporation w/ TX tax rates	
Discount/Compound Rate	7.2%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	31-Oct-2012
Capital Investment:	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
One-Time, Nondepreciable Expenditure:	avoided
Cost Estimate	$341,507
Cost Estimate Date	04-Sep-2012
Cost Index for Inflation	PCI
Tax Deductible?	y
Annually Recurring Costs:	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
User-Customized Specific Cost Estimates:	N/A
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing (Complaint) 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 Complaint, the June 2003 RCRA Civil Penalty Policy, and the Consolidated Rules of Practice, 40 C.F.R. Part 22, were sent to the following by the method indicated below:

For US Ecology Texas, Inc.

Certified Mail – Return Receipt Requested –

National Registered Agents, Inc.
Registered Agent for US Ecology Texas, Inc.
16055 Space Center Boulevard
Suite 235
Houston, TX 77062-6212

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 –

C.T. Corporation System
Registered Agent for TD*X Associates LP
350 North St. Paul Street
Suite 2900
Dallas, TX 75201-4234

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Certified Mail – Return Receipt Requested –

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

For TD*X Associates, LLC

Certified Mail – Return Receipt Requested –

Carl Palmer
Registered Agent for TD*X Associates, LLC
TD*X Associates, LLC
103 Rhapsody Court
Cary, NC 27519-8386

For Environmental Thermal Technologies, LLC

Certified Mail – Return Receipt Requested –

Corporation Services of America
Registered Agent for Environmental Thermal Technologies, LLC
276 Kingsbury Grade
Suite 104
Stateline, NV 89449-9804

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2012 OCT -4 AM 9:20
REGIONAL HEARING CLERK
EPA REGION VI

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(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].

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

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

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.

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".

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 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 Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) 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 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 for either stack, the analysis shall include speciation of the gas. This information shall be included in the report required in Paragraph 69.A.5.g below.

g. 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.

h. Subsequent tune-ups shall be conducted annually 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)(ii) and (iv) 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).

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.

9. 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).

10. 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)(ii) and (iv) 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 B 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).

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 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 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 thirty (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 stream profiles, 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).

c. All exceedances of the Reconfigured TDU Compliance Standards and the AWFCO requirements established in accordance with Paragraph 69.C.9.

d. 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.

e. Documentation showing the installation of the TOU required by Paragraph 69.A.8, and the additional AWFCO requirements required by Appendix 1, Table B (Paragraph 69.A.10).

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. The feedstock limitations applicable to the operation of the oil reclamation unit under 40 C.F.R. § 261.6(a)(3)(iv)(C) set forth in Paragraph 69.D;

b. The investigation, recordkeeping, testing, and reporting requirements of 40 C.F.R. § 63.1206(c)(3) (v), (vi) and (vii);

c. Appropriate recordkeeping and reporting requirements; and

d. 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 C 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 standard 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.8 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 immediately cease processing hazardous waste in the Reconfigured TDU. 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 standard 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", 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. Subject to Paragraph 69.C.7 of this CAFO, 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).

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

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 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.6) 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 plans 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 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.

B. Within thirty (30) days of the effective date of the CAFO, the Respondents shall submit to EPA a certification that the following equipment in the oil reclamation unit and the TDU is not 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.

This certification shall be submitted in accordance with Paragraphs 76.H and 76.I.

C. 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.

D. 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).

E. 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).

F. Within ninety (90) days after the reconfiguration of the TDU pursuant to Paragraph 69.A.8 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 ninety (90) days of completion of the performance tests. The performance tests results shall be submitted in accordance with Paragraphs 76.H and 76.I.

G. Within 210 days of the effective date of the CAFO, the Respondents shall submit a written report to EPA showing compliance with Paragraphs 76.C, 76.D, and 76.E.

H. The certification and report 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 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. The certification and report 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.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), 69A.8, and 69.A.11

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.H (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 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

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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.

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 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.

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

FOR THE RESPONDENT:

Date: 9/27/12

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: September 26, 2012

Carl R. Palmer
TD*X Associates L.P.

FOR THE COMPLAINANT:

Date: 10·03·12

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: 10/4/12

Patrick Rankin
Regional Judicial Officer

APPENDIX 1 – OPERATING PARAMETERS

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TABLE A

TDU OIL RECLAMATION SYSTEM INTERIM REQUIREMENTS PRIOR TO TOU INSTALLATION

Tag No.	Equipment Operating Parameter	Operating Parameter Limit	Compliance Basis
TT-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)[2]
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)[3]
M-100	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 Concentration	[Hg] < 50 ppm/Bin	Blending Protocols & Documentation[4]
	Maximum TDU Feed Organic Halide Concentration	[Total Organic Halides] < 1,500 ppm/Bin	Blending Protocols & Documentation

[1] Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

[2] Previous six 1-minute readings are summed and divided by six.

[3] 40 C.F.R. §§ 63.1209(b)(5).

[4] See Paragraph 69.A.3 of the CAFO.

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, Maximum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS[5], 6-min RA[6]
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[7]
KY-110	TOU, Minimum Residence Time (Calculated from Purge Vent Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds	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	AWFCO: CPMS, 60-sec delay
M-121	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	Maintain Temperature < 120°F	AWFCO: CPMS, HRA

[5] Continuous Process Monitoring System – See Paragraph 69.I of the CAFO.

[6] Previous six 1-minute readings are summed and divided by six.

[7] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

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	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	[Hg] < 50 ppm/Bin	Blending Protocols & Documentation[8], Feed Stream Analysis Plan (if applicable)[9]
	Maximum TDU Feed Organic Halide Concentration	[Total Organic Halides] < 1,500 ppm/Bin	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Semi-Volatile Metals Concentration[10]	N/A	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Low-Volatile Metals Concentration[11]	N/A	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)

[8] See Paragraph 69.A.3 of the CAFO.

[9] See Paragraph 69.A.11 of the CAFO.

[10] Semi-volatile metals means a combination of cadmium and lead.

[11] Low-volatile metals means a combination of Arsenic, Beryllium, and Chromium.

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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, Maximum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS[12], 6-min RA[13]
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 Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds	AWFCO: CPMS, HRA
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	AWFCO: CPMS, 60-sec time delay
M-121	Minimum Percent Excess Air, Operation of Purge Vent Injector Air Supply	Purge Vent Air Supply > 20% Excess Air	AWFCO: CPMS, Tuning of Combustion Airflow

[12] Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

[13] Previous six 1-minute readings are summed and divided by six.

[14] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

TE-28	Maximum Condenser System Exhaust Temperature	OPL Established @ < 3-run Average 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 Concentration	[Hg] < 50 ppm/Bin	Blending Protocols & Documentation[15], Feed Stream Analysis Plan (if applicable)[16]
	Maximum TDU Feed Organic Halide Concentration	OPL Established as Measured Ratio[17]	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Semi-Volatile Metals Concentration[18]	OPL Established as Measured Ratio[19]	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Low-Volatile Metals Concentration[20]	OPL Established as Measured Ratio[21]	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)

[15] See Paragraph 69.A.3 of the CAFO.

[16] See Paragraph 69.A.11 of the CAFO.

[17] Maximum TDU Feed Concentration established as a measured ratio (not to exceed 4000 ppm/bin) from emissions data collected during CDT. See plan example calculations.

[18] Semi-volatile metals means a combination of cadmium and lead.

[19] Maximum TDU Feed Concentration established as measured ration from emissions data collected during CDT. See plan example calculations.

[20] Low-volatile metals means a combination of Arsenic, Beryllium, and Chromium.

[21] Maximum TDU Feed Concentration established as measured ratio from emissions data collected during CDT. See plan example calculations.

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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 4th day of October, 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 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 – 7007 0710 0002 1385 1491

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 – 7007 0710 0002 1385 1507

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

Evan L Pearson

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2012 OCT -4 AM 9:20
REGIONAL HEARING CLERK
EPA REGION VI

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(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].

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

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

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.

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".

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 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 Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) 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 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 for either stack, the analysis shall include speciation of the gas. This information shall be included in the report required in Paragraph 69.A.5.g below.

g. 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.

h. Subsequent tune-ups shall be conducted annually 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)(ii) and (iv) 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).

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.

9. 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).

10. 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)(ii) and (iv) 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 B 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).

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 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 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 thirty (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 stream profiles, 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).

c. All exceedances of the Reconfigured TDU Compliance Standards and the AWFCO requirements established in accordance with Paragraph 69.C.9.

d. 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.

e. Documentation showing the installation of the TOU required by Paragraph 69.A.8, and the additional AWFCO requirements required by Appendix 1, Table B (Paragraph 69.A.10).

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. The feedstock limitations applicable to the operation of the oil reclamation unit under 40 C.F.R. § 261.6(a)(3)(iv)(C) set forth in Paragraph 69.D;

b. The investigation, recordkeeping, testing, and reporting requirements of 40 C.F.R. § 63.1206(c)(3) (v), (vi) and (vii);

c. Appropriate recordkeeping and reporting requirements; and

d. 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 C 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 standard 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.8 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 immediately cease processing hazardous waste in the Reconfigured TDU. 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 standard 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", 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. Subject to Paragraph 69.C.7 of this CAFO, 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).

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

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 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.6) 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 plans 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:

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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 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.

B. Within thirty (30) days of the effective date of the CAFO, the Respondents shall submit to EPA a certification that the following equipment in the oil reclamation unit and the TDU is not 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.

This certification shall be submitted in accordance with Paragraphs 76.H and 76.I.

C. 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.

D. 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).

E. 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).

F. Within ninety (90) days after the reconfiguration of the TDU pursuant to Paragraph 69.A.8 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 ninety (90) days of completion of the performance tests. The performance tests results shall be submitted in accordance with Paragraphs 76.H and 76.I.

G. Within 210 days of the effective date of the CAFO, the Respondents shall submit a written report to EPA showing compliance with Paragraphs 76.C, 76.D, and 76.E.

H. The certification and report 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 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. The certification and report 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.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), 69A.8, and 69.A.11

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.H (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 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.

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 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.

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

FOR THE RESPONDENT:

Date: 9/27/12

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: September 26, 2012

Carl R. Palmer
TD*X Associates L.P.

FOR THE COMPLAINANT:

Date: 10·03·12

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: 10/4/12

Patrick Rankin
Regional Judicial Officer

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
TT-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)[2]
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)[3]
M-100	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 Concentration	[Hg] < 50 ppm/Bin	Blending Protocols & Documentation[4]
	Maximum TDU Feed Organic Halide Concentration	[Total Organic Halides] < 1,500 ppm/Bin	Blending Protocols & Documentation

[1] Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

[2] Previous six 1-minute readings are summed and divided by six.

[3] 40 C.F.R. §§ 63.1209(b)(5).

[4] See Paragraph 69.A.3 of the CAFO.

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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, Maximum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS[5], 6-min RA[6]
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[7]
KY-110	TOU, Minimum Residence Time (Calculated from Purge Vent Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds	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	AWFCO: CPMS, 60-sec delay
M-121	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	Maintain Temperature < 120°F	AWFCO: CPMS, HRA

[5] Continuous Process Monitoring System – See Paragraph 69.I of the CAFO.

[6] Previous six 1-minute readings are summed and divided by six.

[7] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

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	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	[Hg] < 50 ppm/Bin	Blending Protocols & Documentation[8], Feed Stream Analysis Plan (if applicable)[9]
	Maximum TDU Feed Organic Halide Concentration	[Total Organic Halides] < 1,500 ppm/Bin	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Semi-Volatile Metals Concentration[10]	N/A	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Low-Volatile Metals Concentration[11]	N/A	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)

[8] See Paragraph 69.A.3 of the CAFO.

[9] See Paragraph 69.A.11 of the CAFO.

[10] Semi-volatile metals means a combination of cadmium and lead.

[11] Low-volatile metals means a combination of Arsenic, Beryllium, and Chromium.

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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, Maximum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS[12], 6-min RA[13]
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 Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds	AWFCO: CPMS, HRA
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	AWFCO: CPMS, 60-sec time delay
M-121	Minimum Percent Excess Air, Operation of Purge Vent Injector Air Supply	Purge Vent Air Supply > 20% Excess Air	AWFCO: CPMS, Tuning of Combustion Airflow

[12] Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

[13] Previous six 1-minute readings are summed and divided by six.

[14] 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

TE-28	Maximum Condenser System Exhaust Temperature	OPL Established @ < 3-run Average 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 Concentration	[Hg] < 50 ppm/Bin	Blending Protocols & Documentation[15], Feed Stream Analysis Plan (if applicable)[16]
	Maximum TDU Feed Organic Halide Concentration	OPL Established as Measured Ratio[17]	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Semi-Volatile Metals Concentration[18]	OPL Established as Measured Ratio[19]	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Low-Volatile Metals Concentration[20]	OPL Established as Measured Ratio[21]	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)

[15] See Paragraph 69.A.3 of the CAFO.

[16] See Paragraph 69.A.11 of the CAFO.

[17] Maximum TDU Feed Concentration established as a measured ratio (not to exceed 4000 ppm/bin) from emissions data collected during CDT. See plan example calculations.

[18] Semi-volatile metals means a combination of cadmium and lead.

[19] Maximum TDU Feed Concentration established as measured ration from emissions data collected during CDT. See plan example calculations.

[20] Low-volatile metals means a combination of Arsenic, Beryllium, and Chromium.

[21] Maximum TDU Feed Concentration established as measured ratio from emissions data collected during CDT. See plan example calculations.

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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 4th day of October, 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 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 – 7007 0710 0002 1385 1491

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 – 7007 0710 0002 1385 1507

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

Evan L Pearson