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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 MFA INCORPORATED,)
 and MFA ENTERPRISES, INC.,)
)
 Defendants.)
_____)

Civil Action No. 2:18-cv-04133-WJE

CONSENT DECREE

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WHEREAS, Plaintiff the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, pursuant to Section 113(b) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(b), alleging that MFA Incorporated, and MFA Enterprises, Inc. (collectively “MFA”), violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r);

WHEREAS, MFA Incorporated is an agricultural cooperative corporation headquartered in Columbia, Missouri that owns and operates retail farm supply centers;

WHEREAS, MFA Enterprises, Inc. is a wholly-owned subsidiary of MFA Incorporated.;

WHEREAS, each of the MFA Facilities addressed by this Decree stores, handles, transports, and/or sells anhydrous ammonia, a “regulated substance,” in an amount above the threshold quantity of 10,000 pounds, and all of these MFA Facilities are subject to the requirements of the Risk Management Program provisions of Section 112(r)(7) of the CAA, and its implementing regulations, 40 C.F.R. Part 68;

WHEREAS, the Complaint alleges that MFA violated the Risk Management Program Regulations promulgated at 40 C.F.R. Part 68 at nine of MFA’s Facilities in Missouri with respect to its storing, handling, and/or transporting of anhydrous ammonia;

WHEREAS, the allegations in the Complaint are based on EPA Facility inspections, MFA’s responses to information requests, and MFA’s own reports;

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

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

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; and Section 113(b) of the CAA, 42 U.S.C. § 7413(b). Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b), (c), and 1395(a), and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because MFA does business in this District and a substantial portion of the events giving rise to the claims alleged herein occurred in this District. For the purposes of this Decree, or any action to enforce this Decree, MFA consents to the Court's jurisdiction over this Decree and any such action over MFA, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, MFA agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 112(r) and 113 of the CAA, 42 U.S.C. §§ 7412(r), 7413.

II. APPLICABILITY

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

4. No transfer of ownership or operation of Facilities or any portion thereof, prior to the Termination Date, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve MFA of its obligation to ensure that the terms of this Decree are implemented. At least thirty (30) Days prior to such transfer, MFA shall provide a copy of this Consent Decree to

the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed transfer or sale agreement to EPA Region 7 and to the United States, in accordance with Section XV (Notices) of this Decree. Any attempt to transfer ownership or operation of any of the Facilities without complying with this Paragraph constitutes a violation of this Decree.

5. Nothing in this Consent Decree shall be construed to require MFA to continue to operate or continue Covered Processes at any Facility. The idling, closure or cessation of Covered Processes (i.e. cessation of anhydrous ammonia handling) of or at a Facility shall not relieve MFA of any obligations under the Consent Decree with respect to such Facility except as provided herein. Should MFA decide to permanently cease Covered Processes or close any Facility at which implementation of Appendices A and B of this Consent Decree is not yet complete, MFA may request EPA approval for relief from the remaining requirements as to that Facility. EPA shall grant the request if MFA has ceased all Covered Processes, surrendered all operational permits (if any) for such Facility, and deregistered the facility from the Risk Management Program in accordance with 40 C.F.R. § 68.190(c). Closure in accordance with this Paragraph shall not be considered a Modification as described in Paragraphs 86 and 87. In its sole discretion, EPA may grant the request in other circumstances deemed appropriate by EPA.

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

7. MFA agrees not to contest the validity of the Consent Decree in any subsequent proceeding to implement or enforce its terms. In any action to enforce this Consent Decree, MFA shall not raise as a defense the failure by any of its officers, directors, employees, or agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined or used in the CAA, or in regulations promulgated thereunder, shall have the meanings assigned to them in such statute or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Audit” shall mean a third-party audit as described in Appendix A.
- b. “Auditor” shall mean an independent third-party auditor.
- c. “Audit Facility” shall mean any Facility selected for an on-site Audit as described in Appendix A.
- d. “Audit Finding” shall mean each way in which any document, record, report, diagram, test, system, review, evaluation, policy, practice, plan, training, procedure, personnel, equipment, or other item, action or omission at a Facility deviates from, or does not comply or conform with Section V (Compliance Requirements) and with Appendices A, B, and C of this Consent Decree.
- e. “Audit Participant” shall mean any participant to an audit that is not an employee or subcontractor of the Auditor.
- f. “Complaint” shall mean the complaint filed by Plaintiff in this action.
- g. “Compliance Requirements” shall mean the requirement to comply with the provisions of Section 112 of the CAA, 40 C.F.R. Part 68, and relevant industry

standards as of the date of lodging of this Consent Decree, as described in and established in Section V (Compliance Requirements) and Appendix B to this Consent Decree.

h. “Consent Decree” or “Decree” shall mean this Decree, including all appendices.

i. “Covered Process” shall mean “a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.”
40 C.F.R. § 68.3.

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

k. “Date of Lodging” shall mean the day that this Consent Decree is lodged with the Court for public comment.

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

m. “Effective Date” shall have the definition provided in Section XVI.

n. “Eligible SEP Costs” shall mean money spent on or after December 8, 2017 by MFA to implement the Supplemental Environmental Project described in Section VI.

o. “Facility” shall mean any one of the seventy-six facilities owned or operated by MFA in the United States that is subject to the Risk Management Provisions of the Clean Air Act and 40 C.F.R. Part 68, and included on the list of all Facilities attached as Appendix D.

- p. “Independent Third Party Audit Protocol” shall mean the entirety of the compliance obligations described in and established in Appendix A to this Consent Decree.
- q. “Interest” shall mean interest at the rate specified in 28 U.S.C. § 1961.
- r. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.
- s. “Parties” shall mean the United States and MFA.
- t. “Plaintiff” shall mean the United States.
- u. “Regulated Substance” shall mean any substance listed by EPA in 40 C.F.R. § 68.130 pursuant to Section 112(r)(3) of the Clean Air Act.
- v. “Risk Management Plan” or “RMP” shall mean a submission required pursuant to 40 C.F.R. Part 68, Subpart G.
- w. “Safety Systems” shall mean all Covered Process component parts designed to limit the unintended release or potential for unintended release of anhydrous ammonia, including excess flow valves, back-check valves, emergency shut-off valves, hydrostatic relief valves, pressure relief valves, and pull away protection (such as break-a-way devices, shear fitting devices, or suitable bulkheads).
- x. “Section” shall mean a portion of this Decree identified by a Roman numeral.
- y. “Termination Date” shall mean the date this Consent Decree terminates as provided by Section XIX (Termination) of this Decree.
- z. “Third Party” shall mean any entity that is not MFA Inc., MFA Enterprises, Inc., an affiliated entity, or the United States.

aa. “Tier One Audits” shall mean the first ten Audit Facilities as described in Appendix A.

bb. “Tier Two Audits” shall mean the final ten Audit Facilities as described in Appendix A.

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

IV. CIVIL PENALTY

9. Within thirty (30) Days after the Effective Date of this Consent Decree, MFA shall pay the sum of \$850,000.00 as a civil penalty, together with Interest accruing from December 8, 2017.

10. MFA shall pay this civil penalty and Interest by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with instructions provided to MFA by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Western District of Missouri after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which MFA shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to Stefan Knudsen, 201 Ray Young Drive, Columbia, Missouri 65201-5399, 573-876-5111, sknudsen@mfa-inc.com, on behalf of MFA. MFA may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XV (Notices).

11. At the time of payment, MFA shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati Ohio 45268; (ii) to the United States via

email or regular mail in accordance with Section XV; and (iii) to EPA in accordance with Section XV. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. MFA Inc., et al., and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-2-1-11257.

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

V. **COMPLIANCE REQUIREMENTS**

13. At each Facility, MFA shall comply with Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the regulations EPA has promulgated thereunder, and the currently effective industry standards and practices applicable to MFA's operations. The parties have agreed upon the currently effective industry standards and practices applicable to MFA's operations, which are described in Appendix B attached hereto. In accordance with Appendices A and B, MFA shall hire an Auditor(s) to conduct third party audits at twenty of its facilities to be selected by EPA. MFA shall comply with and implement all provisions of the Independent Third Party Audit Protocol embodied in Appendix A attached hereto, as well as with all provisions of Appendix B attached hereto. MFA shall ensure that the audits are completed in accordance with the deadlines set forth at Paragraph 28 of Appendix A.

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

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

15. MFA shall implement a Supplemental Environmental Project (“SEP”) implementing new technology for an electronic shut-off system (“ESOS”), in accordance with all provisions of Paragraphs 15-25 and Appendix C. The SEP shall be completed within three (3) years after the Effective Date in accordance with the schedule set forth in Appendix C. The SEP shall provide ESOS systems at no fewer than fifty-three Facilities. Each ESOS will include emergency shut-off valves (“ESVs”), E-Stop emergency stop push buttons (“E-Stops”), and a remote stop transmitter that can be worn by an employee. Should a release occur, the remote transmitter and E-Stops are designed to close all ESVs and shut down the liquid and vapor pumps facility-wide.

16. MFA is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. MFA may use contractors or consultants in planning and implementing the SEP.

17. With regard to the SEP, MFA certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA’s approval of the SEP is complete and accurate and that MFA in good faith estimates that the cost to implement the SEP is at least \$400,000;

b. that, as of the date of executing this Decree, MFA is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that MFA was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this

Decree;

d. that MFA has not received and will not receive credit for the SEP in any other enforcement action;

e. that MFA will not receive any reimbursement for any portion of the SEP from any other person; and

f. that (i) MFA is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 15; and (ii) MFA has inquired of the SEP implementer whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the implementer that it is not a party to such a transaction. For purposes of these certifications, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

18. SEP Completion Report.

a. Within 30 days after the date set for completion of the SEP, MFA shall submit a SEP Completion Report to the United States, in accordance with Section XV (Notices). The SEP Completion Report shall contain the following information:

- (1) a detailed description of the SEP as implemented;
- (2) a description of any problems encountered in completing the SEP and the solutions thereto;
- (3) an itemized list of all Eligible SEP Costs expended;
- (4) certification that the SEP has been fully implemented pursuant to

the provisions of this Decree; and

(5) a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

19. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate MFA's completion report.

20. After receiving the SEP Completion Report, the United States shall notify MFA whether or not MFA has satisfactorily completed the SEP. If MFA has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section IX (Stipulated Penalties).

21. Disputes concerning the satisfactory performance of the SEP and the amount of Eligible SEP Costs may be resolved under Section XI (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

22. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 30.

23. Any public statement, oral or written, in print, film, or other media, made by MFA making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. MFA Inc., taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act."

24. For federal income tax purposes, MFA agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

25. If MFA satisfactorily completes the SEP, but does not spend the full amount of the estimate set forth in Paragraph 17.a, and if EPA determines that the amount remaining reasonably could be applied toward installing the ESOS at additional facilities, MFA shall continue installing ESOS at its facilities until it has spent at least \$400,000.00.

VII. REPORTING REQUIREMENTS

26. MFA shall submit all reports and deliverables described in the: Independent Third Party Audit Protocol, Appendix A, and the Compliance Requirements, Appendix B, to EPA in the manner set forth in Section XV (Notices) and in accordance with the schedules set forth in Appendices A and B.

27. Quarterly Reporting. MFA shall provide EPA with electronic quarterly reports of the progress of all actions under this Consent Decree. For purposes of this Paragraph, “quarterly” means a fiscal quarter of MFA’s fiscal year, which begins September 1st annually. Each quarterly report must include:

- a. A description of progress on all activities relating to the Consent Decree, including a spreadsheet of all inspections and audits, all inspection and audit findings, a scheduled date to fix each finding and the actual completion date for each fix, and a brief explanation of any resolutions to findings;
- b. A description of any non-compliance and steps taken by MFA to resolve it;
- c. A description of progress on SEP implementation, including a spreadsheet of all SEP installations that occurred during that quarter, and a list of installations planned for the upcoming quarter; and

d. A tabulation of the specific facilities at which inspections and audits have been performed during the previous quarter, and schedule of the inspections and audits planned in the upcoming quarter.

28. Whenever any violation of this Consent Decree or any other event affecting MFA's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, MFA shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after MFA first knew of the threat posed by the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

29. All reports shall be submitted to the persons designated in Section XV (Notices) of this Decree and, where specified, made publicly available on MFA's website.

30. Certification of Reports and Other Submissions.

a. Each report and other submission by MFA under this Section and under the Appendices shall be signed by a responsible official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. This certification requirement does not apply to emergency notifications where compliance would be impractical.

31. The reporting requirements of this Consent Decree do not relieve MFA of any reporting obligations required by any federal, state, or local law, regulation, permit, or other requirement.

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

VIII. APPROVAL OF DELIVERABLES

33. After review of any plan, report, or other item that is required to be submitted by MFA pursuant to this Consent Decree, EPA shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission. Specifically, the following plans, reports, or other items are subject to this Section: MFA's responses to Audit reports pursuant to Appendix A; and MFA's reports, proposed maintenance and repair schedules, and certifications and submissions pursuant to Appendix B.

34. If the submission is approved pursuant to Paragraph 33.a, MFA shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 33.b, MFA shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to MFA's right to dispute the specified conditions or the disapproved portions, under Section XI (Dispute Resolution) of this Decree. If the submission is disapproved in whole or in part pursuant to Paragraph 33.c or d, MFA shall, within 30 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved

portion thereof, for approval, in accordance with the preceding Paragraphs, subject to MFA's right to dispute a whole or partial disapproval, under Section XI (Dispute Resolution) of this Decree. If the resubmission is approved in whole or in part, MFA shall proceed in accordance with the preceding Paragraph.

35. Any stipulated penalties applicable to the original submission, as provided in Section IX (Stipulated Penalties) of this Decree, shall accrue during the 30-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of MFA's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

36. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require MFA to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to MFA's right to dispute a whole or partial disapproval, under Section XI (Dispute Resolution) of this Decree, and the right of EPA to seek stipulated penalties as provided in the foregoing Paragraphs.

37. Failure of Compliance. Notwithstanding the review or approval by any agency of the United States of any plans, reports, policies or procedures formulated pursuant to the Consent Decree, MFA will remain solely responsible for compliance with the terms of the Consent Decree, all applicable permits, and all applicable federal, state, regional, and local laws and regulations, except as provided in Section X (Force Majeure) of this Decree.

IX. STIPULATED PENALTIES

38. MFA shall be liable for stipulated penalties to the United States for violations of this Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree according to all

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

39. Late Payment of Civil Penalty. If MFA fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, MFA shall pay a stipulated penalty of \$8,000 per Day for each Day that the payment is late.

40. Stipulated Penalties for Violations of Compliance Requirements:

a. Except as provided for in Paragraph 40.b., no stipulated penalties under this Consent Decree shall accrue for: (1) violations of the Compliance Requirements set forth in Appendix B, provided that any such noncompliance is corrected as required by Paragraphs 6-11 of Appendix B; or (2) Audit Findings listed in an Auditor's Report submitted to EPA pursuant to Appendix A, provided that such Audit Finding is corrected in accordance with Paragraphs 22-28 of Appendix A. Except as set forth in Paragraph 74, the United States hereby explicitly reserves its rights to bring a civil action based on any violation of Compliance Requirements set forth in Paragraph 13, violations of other provisions of this Consent Decree, Audit Findings, or applicable law (including, but not limited to, actions for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt).

b. The following stipulated penalties shall accrue per violation per Day for violations of Compliance Requirements set forth in Paragraph 13 above where such violations commenced after the date for completion of the applicable Audit as set forth in Paragraph 28 of Appendix A, or where such violations are not contained in the Audit Findings listed in the Auditor's Report.

| Period of Non-Compliance or Days Late | Penalty Per Violation Per Day Late or Deficient |
|--|--|
| 1-15 | \$1,500 |
| 16-30 | \$3,000 |
| 31 and Over | \$6,000 |

41. Stipulated Penalties for Failure to Perform Audits and Timely and Adequately Conduct Audits in Accordance with Appendix A of this Consent Decree. MFA shall be liable for the following stipulated penalties that shall accrue per violation per Day for the following violations of the requirements pertaining to the compliance audits as set forth in Appendix A.

a. Failure to complete an Audit in accordance with the Audit methodology set forth in Paragraphs 14 – 19 of Appendix A and complete the Audit by the applicable deadline set forth in Paragraph 28 of Appendix A.

| Period of Non-Compliance or Days Late | Penalty Per Violation Per Day Late or Deficient |
|--|--|
| 1-15 | \$2,500 |
| 16-30 | \$5,000 |
| 31 and Over | \$10,000 |

b. Failure of Auditor to submit Auditor’s Report to EPA and/or of MFA to submit MFA’s Audit Statement as required by Paragraphs 20 and 22 of Appendix A.

| Period of Non-Compliance or Days Late | Penalty Per Violation Per Day Late or Deficient |
|--|--|
| 1-15 | \$2,500 |
| 16-30 | \$5,000 |
| 31 and Over | \$10,000 |

c. Failure of MFA to correct an Audit Finding by applicable deadline as set forth in Paragraph 24 and 28 of Appendix A.

| Period of Non-Compliance or Days Late | Penalty Per Violation Per Day Late or Deficient |
|--|--|
| 1-15 | \$2,500 |
| 16-30 | \$5,000 |
| 31 and Over | \$10,000 |

42. The following stipulated penalties shall accrue per violation per Day for each failure to timely establish Corporate Policies, implement Recognized and Generally Accepted Good Engineering Practices, and update RMPs in accordance with Paragraphs 3, 5-6, and 7 of Appendix B, respectively.

| Period of Non-Compliance or Days Late | Penalty Per Violation Per Day Late or Deficient |
|--|--|
| 1-15 | \$2,500 |
| 16-30 | \$5,000 |
| 31 and Over | \$10,000 |

43. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VII (Reporting Requirements) and Section XII (Information Collection and Retention) of this Consent Decree.

| Period of Non-Compliance or Days Late | Penalty Per Violation Per Day Late or Deficient |
|--|--|
| 1-15 | \$1,000 |
| 16-30 | \$2,000 |
| 31 and Over | \$4,000 |

44. Stipulated Penalties for Failure to Satisfactorily Complete the SEP.

a. If MFA fails to satisfactorily complete the SEP by the deadlines set in Section VI (Supplemental Environmental Project) and Appendix C, MFA shall pay stipulated penalties for each day for which it fails to satisfactorily complete the SEP, as follows:

| Period of Non-Compliance or Days Late | Penalty Per Violation Per Day Late or Deficient |
|--|--|
| 1-15 | \$1,500 |
| 16-30 | \$3,000 |
| 31 and Over | \$6,000 |

b. If MFA fails to implement the SEP, or halts or abandons work on the SEP, MFA shall pay a stipulated penalty of \$500,000. The penalty under this subparagraph shall accrue as of the date specified for completing the SEP or the date performance ceases, whichever is earlier.

c. If MFA fails to comply with the milestones in Section VI (Supplemental Environmental Project) and Appendix C for implementing the SEP, MFA shall pay stipulated penalties for each failure to meet an applicable deadline, as follows:

| Period of Non-Compliance or Days Late | Penalty Per Violation Per Day Late or Deficient |
|--|--|
| 1-15 | \$1,500 |
| 16-30 | \$3,000 |
| 31 and Over | \$6,000 |

45. The following stipulated penalties shall accrue per violation per Day for all other violations of this Consent Decree not set forth in Paragraphs 39 – 44 above.

| Period of Non-Compliance or Days Late | Penalty Per Violation Per Day Late or Deficient |
|--|--|
| 1-15 | \$1,000 |
| 16-30 | \$2,000 |
| 31 and Over | \$4,000 |

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

47. MFA shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand, subject to MFA's right to dispute a written demand for payment of any stipulated penalty under Paragraph 49 and Section XI (Dispute Resolution) of this Decree.

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

49. Stipulated penalties shall continue to accrue as provided in Paragraph 66 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a written decision or order of EPA that is not appealed to the Court, MFA shall pay accrued penalties determined to be owing, together with Interest and as set out in any such agreement or written decision or order, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's written decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, MFA shall pay all accrued penalties determined by the Court to be owing, together with Interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in Paragraph 49.c, below.

c. If any Party appeals the District Court's decision or order, MFA shall pay all accrued penalties determined to be owing, together with Interest, within thirty (30) Days of receiving the final appellate court decision.

50. MFA shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

51. If MFA fails to pay stipulated penalties according to the terms of this Consent Decree, MFA shall be liable for Interest on such stipulated penalties accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for MFA's failure to pay any stipulated penalties.

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

X. FORCE MAJEURE

53. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of MFA, of any entity controlled by MFA, or of MFA's contractors, which delays or prevents the performance of any obligation under this Consent Decree despite MFA's best efforts to fulfill the obligation. The requirement that MFA exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any 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 MFA's financial inability to perform any obligation under this Consent Decree.

54. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, MFA

shall provide notice orally or by electronic mail to the United States within seventy-two (72) hours of when MFA first knew, or with reasonable diligence, should have known that the event might cause a delay. Within seven (7) days thereafter, MFA shall provide in writing to the United States an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; MFA's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of MFA, such event may cause or contribute to an endangerment to public health, welfare or the environment.

55. MFA shall include with any force majeure notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude MFA from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. MFA shall be deemed to know of any circumstance of which MFA, any entity controlled by MFA, or MFA's contractors knew or should have known.

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

57. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure event it will notify MFA in writing of its decision.

58. If MFA elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of the United States' notice pursuant to Paragraphs 56 or 57 above. In any such proceeding, MFA shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that MFA complied with the requirements of Paragraphs 54 and 55. If MFA carries this burden, the delay at issue shall be deemed not to be a violation by MFA of the affected obligation of this Consent Decree identified to the United States and the Court.

XI. DISPUTE RESOLUTION

59. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. MFA's failure to seek resolution of a dispute under this Section shall preclude them from raising any such issue as a defense to an action by the United States to enforce any obligation of MFA arising under this Decree.

60. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when MFA sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the

position advanced by the United States shall be considered binding unless, within ten (10) Days after the conclusion of the informal negotiation period, MFA invokes formal dispute resolution procedures as set forth in Paragraphs 61 – 64 below.

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

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

63. MFA may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV (Notices) of this Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of MFA's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

65. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 63 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, MFA shall bear the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with the law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 63, MFA shall bear the burden of demonstrating that its position complies with this Consent Decree.

66. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of MFA under this Consent Decree, unless and until the final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 49. If MFA does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. INFORMATION COLLECTION, RECORDKEEPING AND RETENTION

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

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain documentary evidence, including photographs and similar data; and
- d. assess MFA's compliance with this Consent Decree.

68. Until three (3) years after the termination of this Consent Decree, MFA shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to MFA's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, MFA shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

69. At the conclusion of the information-retention period provided in the preceding Paragraph, MFA shall notify the United States at least 120 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, MFA shall deliver any such documents, records, or other information to EPA.

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

71. MFA may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If MFA asserts such a privilege, it shall provide the following: (1) the title of or description of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by MFA. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

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

73. Nothing in this Consent Decree shall limit the authority of EPA to conduct tests, inspections, or other activities under any statutory or regulatory provision.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

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

75. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 74. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under any applicable federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 74. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

76. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facilities or MFA's alleged violations, MFA shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 74 of this Section.

77. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. MFA is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and MFA's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that MFA's compliance with any aspect of this Consent Decree will result in compliance with

provisions of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), or the regulations promulgated thereunder, or with any other provisions of federal, state, or local laws, regulations, or permits.

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

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

XIV. COSTS

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

XV. NOTICES

81. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing. Simultaneously, such notices shall be emailed to the relevant recipients, except that any notice attachments that are too voluminous to email need only be provided by mail. Where this Consent Decree requires that notices and submissions are to be made to the United States, they shall be made to the United States Department of Justice and EPA. Where the Consent Decree requires that Notices and Submissions shall be made to EPA, they need only be sent to EPA. Except as otherwise provided herein, all reports, notifications, certifications, or other

communications required under this Consent Decree to be submitted or sent to the United States, EPA, and/or MFA shall be addressed as follows:

As to the United States by email:

eescdcopy.enrd@usdoj.gov

Re: DJ #90-5-2-1-11257

As to the United States by mail:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ# 90-5-2-1-11257

EPA Region 7:

Chief, Chemical & Oil Release Prevention Branch
EPA Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219
Email: Hayes.Scott@epa.gov

Howard Bunch, Esq.
Office of Regional Counsel
Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219
Bunch.Howard@epa.gov

As to MFA:

Jean Paul Bradshaw
Lathrop Gage, LLP
2345 Grand Boulevard
Suite 2200
Kansas City, Missouri 64108-2618
JBradshaw@lathropgage.com

Stefan Knudsen
VP, General Counsel & Corporate Secretary
MFA Incorporated
201 Ray Young Dr.

Columbia, MO 65201-5399
sknudsen@mfa-inc.com

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

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

XVI. EFFECTIVE DATE

84. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVII. RETENTION OF JURISDICTION

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

XVIII. MODIFICATION

86. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. Substitution of SEP implementation at a facility listed in Appendix C for implementation at an alternative facility shall not be considered a material modification under this Paragraph.

87. Any disputes concerning any modification of this Decree shall be resolved pursuant to Section XI (Dispute Resolution) of this Decree, provided, however, that, instead of the burden of proof provided by Paragraph 65, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XIX. TERMINATION

88. This Consent Decree may be terminated upon satisfaction of all of the following conditions:

- a. MFA has completed all requirements set forth in Appendix B of this consent decree;
- b. MFA has completed the Audits and corrected all Audit Findings in accordance with Paragraph 13 and the requirements set forth in Appendix A of this Consent Decree;
- c. MFA has completed the SEP in accordance with Section VI (Supplemental Environmental Project) of this Consent Decree and the requirements set forth in Appendix C of this Consent Decree;
- d. MFA has complied with all other requirements of this Consent Decree for a period of at least two years after entry; and
- e. MFA has paid the civil penalty, has resolved any outstanding disputes, and has paid any accrued stipulated penalties as required by this Consent Decree.

89. If MFA believes it has satisfied the requirements for termination set forth in Paragraph 88, MFA shall serve upon the United States a Request for Termination, stating that

MFA has satisfied those requirements, together with all necessary supporting completion documentation required by Appendices A, B, and C (to the extent not already submitted).

90. Following receipt by the United States of MFA's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether MFA has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit to the Court an appropriate Joint Notice of Termination. The Joint Notice of Termination shall recite that the requirements of the Consent Decree have been met. The Joint Notice of Termination shall not require any further action from the Court and shall terminate the Consent Decree upon filing.

91. If the United States does not agree that the Decree may be terminated, or does not respond to MFA's Request for Termination within 120 Days, MFA may invoke Dispute Resolution under Section XI of this Decree.

XX. PUBLIC PARTICIPATION

92. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate.

93. MFA consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified MFA in writing that it no longer supports entry of the Decree.

XXI. SIGNATORIES/SERVICE

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

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

XXII. INTEGRATION

96. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Except for the Appendices identified in Section XXIII below, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXIII. APPENDICES

97. The following appendices are attached hereto and hereby incorporated into this Consent Decree.

- a. “Appendix A” sets for the requirements for the Compliance Audits required by Paragraph 13 of this Consent Decree;
- b. “Appendix B” lists Compliance Requirements to be performed by MFA pursuant to Paragraph 13 of this Consent Decree;
- c. “Appendix C” sets the requirements for completing the Supplemental Environmental Project; and
- d. “Appendix D” lists all Facilities owned or operated by the MFA in the United States that are subject to this Decree.

XXIV. FINAL JUDGMENT

98. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and MFA. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

Dated and entered this__ day of_____,_____.

WILLIE J. EPPS, JR.
UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Date: /s/ Nathaniel Dogulas
NATHANIEL DOUGLAS
Deputy Chief
Environmental Enforcement Section

Date: 6/25/2018 /s/ Peter Krzywicki
PETER KRZYWICKI
JOHN BRODERICK
Trial Attorneys
Environment and Natural Resources
Division
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 305-4903
(202) 305-0302
Peter.Krzywicki@usdoj.gov
Member of the Michigan Bar
John.Broderick@usdoj.gov
Member of the Massachusetts Bar

TIMOTHY A. GARRISON
United States Attorney
Western District of Missouri

Date: 6/22/2018

/s/ Charles Thomas

CHARLES THOMAS
Assistant United States Attorney
Western District of Missouri
United States Courthouse
400 East 9th Street, Room 5510
Kansas City, MO 64106
(816) 426-3130
Charles.Thomas@usdoj.gov

Date: 6/21/2018

/s/ Rosemarie A. Kelley

ROSEMARIE A. KELLEY

Director

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency

Date: 6/21/2018

/s/ James B. Gulliford

JIM GULLIFORD
Regional Administrator
U.S. Environmental Protection Agency
Region VII

/s/ David Cozad

DAVID COZAD
Regional Counsel
U.S. Environmental Protection Agency
Region VII

/s/ Howard Bunch

HOWARD BUNCH
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR MFA INCORPORATED

Date: 6/21/2018

/s/ Craig Childs

Craig Childs

Senior Vice President of AgriServices, MFA Incorporated

Agent Authorized to Accept Service for MFA Incorporated in this Case:

JEAN PAUL BRADSHAW

Lathrop Gage, LLP

2345 Grand Boulevard

Suite 2200

Kansas City, Missouri 64108-2618

JBradshaw@lathropgage.com

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR MFA ENTERPRISES, INC.

Date: 6/21/2018

/s/ Craig Childs

Craig Childs

Vice President, MFA Enterprises, Inc.

Agent Authorized to Accept Service for MFA Enterprises Inc.in this Case:

JEAN PAUL BRADSHAW

Lathrop Gage, LLP

2345 Grand Boulevard

Suite 2200

Kansas City, Missouri 64108-2618

JBradshaw@lathropgage.com

Appendix A: Independent Third Party Audit Protocol

1. Pursuant to Paragraph 13 of the Consent Decree, MFA shall retain an Auditor(s) who shall conduct a CAA Section 112(r)(7) compliance Audit at each selected Facility in accordance with the requirements set forth in this Appendix A. MFA shall give each Auditor a copy of this Consent Decree and all appendices, as well as all other information and access necessary to complete the Audits set forth herein. The Audits must evaluate each Facility's compliance or conformance with the Audit standards set forth in Paragraphs 15 - 17 below and with the compliance requirements set forth in Appendix B to this Consent Decree. MFA shall ensure that the Auditors conduct the Audits in accordance with the requirements set forth in Paragraphs 14-20 below and according to the deadlines set forth in Paragraph 28 below.

2. The definitions set forth in Section III of the Consent Decree shall apply in the Audits conducted in accordance with this Appendix.

3. United States Approval of Auditors. MFA has submitted to the United States the name and qualifications of three proposed independent third party Auditors pursuant to Paragraph 4.

4. Before the United States can approve any independent third party Auditor to conduct the Audits required by Paragraph 13 of the Consent Decree and as set forth in Paragraphs 14 - 20 below, MFA and each Auditor candidate must certify the following conditions have been met:

a. The Auditor has demonstrated expertise in the application of CAA Risk Management Regulations;

b. The Auditor has not been employed by MFA or any corporate affiliates of MFA, nor conducted research, development, design, construction, financial, engineering, legal, consulting nor any other advisory services for MFA within the last two years; and

c. The Auditor was not involved in the development or construction of any process at any of the Facilities.

5. The Auditor and MFA understand and agree that:

a. The Auditor shall not be permitted to provide any other commercial, business, or voluntary services to MFA for a period of at least two years following the Auditor's submittal of its final Audit Report;

b. MFA shall not provide future employment to any of the Auditors or persons who managed, conducted, or otherwise participated in the Audits for a period of at least two years following the Auditor's submittal of its final Audit Report; and

c. The Auditor and EPA may communicate independently with each other without notice to, or including, MFA.

6. Notwithstanding Paragraphs 1 to 5 the Auditor may assemble an auditing team, to be led by the Auditor. The auditing team may include other employees of the third-party auditor firm or subcontractors meeting the criteria of Paragraphs 4 and 5. The Auditor may obtain participation in any audit by Audit Participants, including MFA or Facility personnel; however Audit Participants shall not contribute to any Auditor's Report under Paragraphs 20 and 23.

7. The United States shall review the proposed Auditors and either approve them in accordance with Paragraph 8 or disapprove them in accordance with Paragraph 9.

8. The United States shall notify MFA in writing whether it approves the proposed Auditor(s). Within 30 Days after the Effective Date, or within 30 days after United States'

approval of a Auditor, MFA shall retain an approved Auditor to perform the activities set forth in Paragraphs 14-20 of this Appendix. The contract for the auditing services shall prohibit the Auditor from providing any other commercial, business, or voluntary services to MFA and its corporate affiliates for a period of at least two years following the Auditor's submittal of its final Audit Report pursuant to Paragraph 20 below; and from employing any persons who managed, conducted, or otherwise participated in the Audits for a period of at least two years following the Auditor's submittal of its final Audit Report. MFA shall ensure that all Audit personnel who conduct or otherwise participate in Audit activities have certified that they satisfy the conditions set forth in Paragraphs 4 and 5 above before receiving any payment from MFA.

9. If the United States disapproves of all of the proposed Auditors, the United States will provide notice to MFA stating the good-faith reasons for such disapprovals. Within 60 days of receipt of the United States' notification, MFA shall submit for approval another proposed Auditor that meets the qualifications set forth in Paragraphs 4 and 5. The United States shall review the proposed Auditor in accordance with Paragraph 7. Disapprovals of the proposed Auditors shall be subject to Section XI (Dispute Resolution) of the Decree.

10. If the Auditor(s) selected pursuant to Paragraph 8 cannot satisfactorily perform the Audits, within sixty (60) Days of learning that the Auditor cannot satisfactorily perform the Audit, MFA shall submit for approval two or more proposed Auditors that meet the qualifications set forth in Paragraphs 4 and 5. In the event that it becomes necessary to select a replacement Auditor as mentioned in this Paragraph, the United States shall review the proposed replacement Auditors and either approve them in accordance with Paragraph 8 or disapprove them in accordance with Paragraph 9.

11. Nothing in Paragraphs 3 - 10 precludes the United States from assessing stipulated penalties for missed Audit deadlines associated with the need to replace an Auditor unless MFA successfully asserts that the inability of the Auditor to perform the Audit as required was a Force Majeure event in accordance with Section X of the Consent Decree; however, any pending Audit deadline set out in Paragraph 28 may be extended up to 120 days by mutual, written agreement between the parties should an Audit deadline be affected while the United States is evaluating a replacement Auditor following MFA's timely submission under Paragraph 10.

12. MFA shall be solely responsible for paying for each Auditor's fees and expenses.

13. Selection of Audit Facilities. MFA shall audit twenty facilities according to the requirements of this Appendix A. EPA, in its unreviewable discretion, shall select the Audit Facilities in two tiers of ten facilities each, as described below.

a. The factors EPA shall consider in the selection of Audit Facilities may include, but shall not be limited to, the following:

i. The First Report on Actions Taken, as described in Paragraph 8 of Appendix B;

ii. Environmental justice areas; and

iii. Compliance history.

b. The Audit Facilities shall be selected according to the following deadlines:

i. Tier One Audit Facility Selection. Within 10 months after the Effective Date, EPA shall provide written notice to MFA of the ten Audit Facilities included as Tier One Audits in Paragraph 28 below (the "Tier One Selection Date").

ii. Tier Two Audit Facility Selection. Within 5 months after the Tier One Selection Date, EPA shall provide written notice to MFA of the ten Audit Facilities included as Tier Two Audits in Paragraph 28 below.

14. Notice of Audit Commencement. At least thirty (30) Days prior to the commencement of each Audit, MFA shall provide notice to EPA pursuant to Section XV (Notices) of this Consent Decree of the Day that each Audit will commence along with the checklist that the Auditor(s) propose to use for the Audit.

15. Paper Audit of MFA Corporate-wide Policies and Engineering Specifications. The Auditor shall first Audit MFA's corporate-wide policies and engineering specifications as described in, and required by, Paragraphs 3 - 4 of Appendix B according to the schedule set forth in the Table in Paragraph 28 of this Appendix. Specifically, the Auditor shall evaluate MFA's corporate-wide policies, Risk Management System, and engineering specifications for compliance with 40 C.F.R. Part 68, and for consistency with the most current design codes and standards, including:

- a. Compressed Gas Association (C.G.A.) G 2.1-2014;
- b. 29 C.F.R. § 1910.111; and
- c. any relevant portions of standards referenced therein including, but not limited to,
 - i. CGA P-42 Section 8.2 Recommended Hose Management Practice for Compressed Gas Transfer Hoses;
 - ii. UL-132 Standard for Safety Relief Valves for Anhydrous Ammonia and LP-Gas or other applicable pressure relief standard;
 - iii. ASME Boiler and Pressure Vessel Code Section 8;
 - iv. National Board Inspection Code;

- v. API 510 Pressure Vessel Code;
- vi. API 580 Risk-Based Inspection and API RP 581 Risk-Based Inspection Technology; and
- vii. ASME B31.3 Process Piping.

The Auditor shall evaluate conformance with all of the above-listed codes, standards and practices regardless of any retroactivity or grandfathering limitations on Facility and Covered Process operations contained therein. MFA may use alternative methods for achieving compliance with the requirements of the applicable industry practices and/or standards as long as the selected alternatives are documented by the Facility to be equivalent to or better than the applicable industry standards in reducing the hazards.

16. MFA shall submit policies and engineering specifications to the Auditor, as required by Paragraph 15, within six months after the Effective Date of the Consent Decree.

17. On-Site Facility Audits. MFA shall ensure that the Auditor conducts a Section 112(r)(7) Audit at each Facility as required by Paragraph 13 of the Consent Decree according to the schedule set forth in the Table in Paragraph 28 of this Appendix. Each Audit shall:

- a. Include a review of all on-site documents.
- b. Evaluate all covered processes for compliance with the applicable requirements of: Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), 40 C.F.R. Part 68, the corporate-wide policies and engineering specifications in Paragraphs 3 - 4 of Appendix B, and all applicable federal, state and local codes and regulations and current accepted industry practices, standards, and guidelines, including the industry standards and codes in Paragraph 15. The Audit must have a particular focus on the following items:

- i. Safety Systems and current emergency response capability, if any, or reliance on local community first responders for releases of RMP chemicals;
- ii. Equipment maintenance, including but not limited to replacing out-of-date hoses and repainting rusted surfaces of nurse tanks;
- iii. Ensuring that Operating Procedures are current, accurate, and comprehensively cover all processes;
- iv. Hazard Reviews, and ensuring that hazards are reviewed and findings are timely addressed;
- v. Internal compliance audits are conducted every three years and findings are timely addressed and documented;
- vi. Training for operators and maintenance personnel is appropriate;
- vii. Incidents, accidents, and releases are being reported in a timely manner and in compliance with applicable regulations; and
- viii. Emergency contact information is updated in a timely manner and in compliance with applicable regulations.

18. Audit Completion. MFA shall ensure that each Auditor completes each Audit no later than the applicable deadline for each Facility set forth in the Table in Paragraph 28 below.

19. Audit Out-briefing.

a. Within ten (10) Days of the completion of each on-site Audit, the Auditor shall conduct an out-briefing with MFA in which the Auditor shall orally convey the major Audit Findings.

b. MFA shall notify EPA of the scheduled date of the out-briefing for each Audit at least five (5) Days prior to the out-briefing. EPA shall have the right to have its

representatives (including contractors) attend the out-briefing either in person or telephonically. If the out-briefing date changes, MFA shall notify EPA at least 48 hours prior to the out-briefing date.

c. MFA shall correct Audit Findings disclosed at the out-briefing in accordance with Paragraphs 24-28 below. Regardless of whether MFA corrects such Audit Findings, the Auditor shall include such Audit Findings in the Auditor's Report submitted to EPA pursuant to Paragraph 20 below, but may also include a description of the correction(s) that occurred prior to submission of the Auditor's Report.

20. Auditor's Report. For each Audit at each Facility, no later than the applicable deadline set forth in the Table in Paragraph 28, MFA shall ensure that the Auditor submits a report of the Audit results (Auditor's Report) directly to EPA pursuant to Section XV (Notices) of this Consent Decree, with a copy sent concurrently to MFA. The Auditor shall not share any written draft reports with MFA prior to the submission of the Auditor's Report directly to both EPA and MFA. EPA shall give notice to MFA as soon as possible before it has any material communications directly with an Auditor about an Audit and give MFA the opportunity to participate in such conversations. The Auditor's Report shall:

a. describe when and how the Audit was conducted, as well as the names of all MFA personnel involved with the Audit;

b. describe all the types of information and records reviewed in each paper Audit phase and the equipment, processes, practices, structures and other items reviewed, tested, observed or evaluated during the on-site Audit phase;

c. identify and list separately each Audit Finding of non-compliance and non-conformance with the Audit standards set forth in Paragraphs 15-17 and discovered in each Audit; and

d. provide a detailed recommendation as to how each discovered Audit Finding should be corrected.

21. At MFA's election, any on-site Audit may serve as the official RMP audit required by 40 C.F.R. § 68.58 provided that all requirements of that section are met. The use of an on-site Audit as the official RMP audit for a facility will reset that facility's three year rolling clock for the performance of a compliance audit.

22. MFA's Statement for Each Audit. For each Audit at each Facility, no later than the applicable deadline set forth in the Table in Paragraph 28, MFA shall submit to EPA, pursuant to Section XV (Notices) of this Consent Decree, a written statement (MFA's Audit Statement) in which MFA:

a. responds to or comments on each of the Audit Findings; and

b. describes each completed or proposed action to correct each undisputed Audit Finding, including the date(s) that such corrections occurred or are scheduled to occur.

23. As set forth in the Table in Paragraph 28, the Auditor shall complete its Audit of Corporate-wide Policies and Engineering Specifications within six months of receipt of such policies and specifications. The Auditor shall provide an Auditor's Report, including any Audit Findings, to MFA and EPA as provided in Section XV (Notices) of the Consent Decree. MFA shall respond to the Report pursuant to Paragraph 22 of this Appendix, and as set forth in the Table in Paragraph 28.

24. Correction of Audit Findings.

a. Except as provided in Paragraph 24.b below, for each Audit at each Facility, MFA shall implement all steps necessary to correct each Audit Finding identified in the Auditor's Report by the earlier of:

- i. the date it is reasonable under the circumstances; or
- ii. the applicable date set forth in the Table in Paragraph 28 for

correction under this Paragraph 24.a.

b. Extensions of Correction Deadlines in Limited Circumstances.

i. MFA may seek more time to implement correction of Audit Findings if in MFA's Audit Statement, submitted to EPA pursuant to Paragraph 22 above, MFA explains and documents:

- (a) that the correction is likely to cost MFA more than \$25,000;
- (b) that it is not reasonable under the circumstances to correct the Audit Finding by the applicable deadline set forth in the Table in Paragraph 28 for corrections under Paragraph 24.a; and
- (c) the date by which MFA believes correction is reasonable under the circumstances.

ii. Where MFA seeks additional time to correct Audit Findings, MFA shall correct such Audit Findings no later than the earlier of:

- (a) the correction date proposed in MFA's Audit Statement;

(b) the date indicated by EPA in an objection submitted under Paragraph 25, provided that such date is not less than ninety (90) Days after MFA's receipt of EPA's objection;

(c) a different date for correction agreed to by the parties or ordered by the Court in Dispute Resolution under Section XI of the Consent Decree; or

(d) the latest possible date for correction under this Paragraph 24.b as set forth in the in the Table in Paragraph 28.

25. EPA Objections to Proposed Timing or Method of Correction of Audit Findings.

a. At any time after receiving MFA's Audit Statement pursuant to Paragraph 22, EPA may object to (1) the method by which MFA has or intends to correct an Audit Finding; and/or (2) the proposed timing of correction where MFA's Audit Statement proposes a later date for correction than the applicable deadline set forth in the Table in Paragraph 28 for correction. If EPA objects, it shall notify the MFA in writing pursuant to Section XV of the Consent Decree (Notices) as to the bases of its objection(s), and indicate what method or methods to correct the Audit Finding(s) are required, and/or provide the date(s) by which it believes it is reasonable under the circumstances for MFA to correct the Audit Finding(s).

b. If MFA disagrees with EPA's proposed method or timing of correction, it may invoke dispute resolution in accordance with Section XI (Dispute Resolution) of this Consent Decree by submitting a Notice of Dispute to EPA within fifteen (15) Days of receiving EPA's objection. If this method of correction is an issue in a dispute, it shall be MFA's burden to establish that the method by which it proposes to correct the Audit

Finding(s) will result in compliance with the applicable Audit standards set forth in Paragraphs 15 and 17. If the timing of correction is in dispute, it shall be MFA's burden to establish (1) that it will cost more than \$25,000 to correct the finding; and (2) that it is not reasonable under the circumstances to correct the Audit Finding(s) any earlier than the date proposed in MFA's Audit Statement submitted pursuant to Paragraph 22.

c. If MFA does not invoke dispute resolution pursuant to Paragraph 24.b within fifteen (15) Days of receiving EPA's objection, MFA shall correct the Audit Finding(s) by the method indicated in EPA's objection by the date set forth in the Table in Paragraph 28.

26. Public Access to Audit Reports. For on-site Audits, after MFA has submitted a response to each Audit Report that contains Findings, including a plan to correct any Findings, MFA shall post the Findings and its response on a publicly accessible portion of MFA's corporate website.

27. Notification of Correction of Audit Findings of Non-Compliance and Non-Conformance. For each Audit Finding in the Auditor's Report, MFA shall notify EPA of the method and date of correction of the Audit Finding of non-compliance and non-conformance in the quarterly report submitted pursuant to Section VII (Reporting) of the Consent Decree for the quarter in which the correction was completed.

28. Audit Milestone Deadlines. For each Audit, MFA shall complete or ensure that the Auditor completes the following Audit milestones no later than the applicable deadlines set forth in the table below for: (1) Completion of the Audit as required by Paragraph 18; (2) Submission of the Audit Report as required by Paragraph 20; (3) Submission of MFA's Statement in response to the Audit as required by Paragraph 22; and (4) Correction of all Audit

Findings as required by Paragraph 24, unless EPA has agreed to an alternative date for correction.

| Type of Audit | Deadline for Completion of Each Audit | Deadline for Auditor Report On Each Audit | Deadline for MFA's Audit Statement For Each Audit | Deadline for Correction of all Audit Findings Unless Delayed Per Paragraph 24.b. | Deadline for Corrections of Audit Findings subject to Paragraph 24.b. |
|--|---------------------------------------|---|---|--|---|
| Corporate-Wide Policy and Engineering Specifications Audit | Eff. Date + 9M | Eff. Date + 10M | Eff. Date + 11M | Eff. Date + 12M | Eff. Date + 13M |
| Tier One Audits (1-10) | Tier One Selection Date + 9M | Tier One Selection Date + 10M | Tier One Selection Date + 11M | Tier One Selection Date + 14M | Tier One Selection Date + 20M |
| Tier Two Audits (11-20) | Tier One Selection Date + 18M | Tier One Selection Date + 19M | Tier One Selection Date + 20M | Tier One Selection Date + 23M | Tier One Selection Date + 29M |

29. Final Report on Actions Taken. Within twenty-eight months after the Tier One Selection Date, MFA shall submit to EPA a Final Report describing its plans for implementing the findings of its Tier One and Tier Two Audit Reports, as applicable, at the remainder of the Facilities listed in Appendix D of this Consent Decree. The Findings shall be implemented, as applicable, within two years of issuing the Final Report, with progress to be reported in the Quarterly Reports required by Paragraph 27 of the Consent Decree.

Appendix B: Compliance Requirements

1. Pursuant to Paragraph 13 of the Consent Decree, MFA shall comply with each of the following requirements listed in Paragraphs 3 – 11 below.

2. The definitions set forth in Section III of the Consent Decree shall apply herein.

3. Corporate Policies. By no later than six months after the Effective Date of the Consent Decree, MFA shall establish corporate policies and engineering specifications for the storage and handling of anhydrous ammonia at all Facilities. These specifications must address RMP implementation and compliance as required by 40 C.F.R. Part 68 and must be based on the most current recognized and generally accepted good engineering practices (“RAGAGEP”) provided in the following list of industry standards and practices, including updates or modifications as may occur during the pendency of this Consent Decree, and any new industry standard or practice MFA identifies as RAGAGEP, as appropriate based upon individual facility components:

- a. Compressed Gas Association (C.G.A.) G 2.1-2014;
- b. 29 C.F.R. § 1910.111; and
- c. any relevant portions of standards referenced therein including, but not

limited to,

- i. CGA P-42 Section 8.2 Recommended Hose Management Practice for Compressed Gas Transfer Hoses;
- ii. UL-132 Standard for Safety Relief Valves for Anhydrous Ammonia and LP-Gas or other applicable pressure relief standard;
- iii. ASME Boiler and Pressure Vessel Code Section 8;
- iv. National Board Inspection Code;

- v. API 510 Pressure Vessel Code;
- vi. API RP 580, Risk-based Inspection and API RP 581, Risk-based Inspection Technology; and
- vii. ASME B31.3, Process Piping.

d. Each year, as a component of every fourth quarterly report required under Paragraph 27 of the Consent Decree, MFA shall submit to EPA a report explaining any new industry standard or practice MFA identified as RAGAGEP or that it did not identify any new standard or practice as RAGAGEP during that year.

4. The corporate policies and engineering specifications must specifically address:

- a. Risk Management Plan implementation and compliance;
- b. Testing/inspection and/or replacement of underground piping used for anhydrous ammonia;
- c. Safety Systems;
- d. Filling third party (farmer) nurse tanks;
- e. How and when new industry standards will be incorporated in the future;

and

- f. Management system for RMP implementation, as required in 40 C.F.R.

§ 68.15.

5. Implementation of Recognized and Generally Accepted Good Engineering Practices/Industry Standards. By no later than eight months after the Effective Date of the Consent Decree, at each Facility, MFA shall implement the corporate policies and engineering specifications for the storage and handling of anhydrous ammonia described in Paragraphs 3 and 4 above.

6. By no later than the dates listed in Paragraph 6.a.- 6.d. below, MFA shall implement the following substantive changes based on the most current RAGAGEP:

a. By no later than six months after the Effective Date of the Consent Decree, MFA shall complete implementation of the inventory maintenance system at the Facilities, which will include completion of inspections of all pressure relief devices and hoses on Covered Processes at all facilities to confirm that the devices meet the RAGAGEP contained in the Compressed Gas Association (“CGA”) publication CGA G2.1-2014 Sections 5.8.16 and 5.7. By no later than eight months after the Effective Date of the Decree, MFA shall provide documentation to EPA confirming implementation of the inventory maintenance system, which shall include replacement of any out of date pressure relief devices and hoses and certification that its facilities are in compliance with these provisions. For purposes of this appendix, “inventory maintenance system” means the internet-based, company-wide database system for tracking and completing preventative maintenance, designed to schedule equipment inspections and confirm maintenance activities are completed.

b. By no later than seven months after the Effective Date of the Decree, MFA shall certify that all facilities comply with CGA G2.1-2014 Section 5.10.8.1.

c. By no later than one year after the Effective Date of the Consent Decree, MFA shall have implemented testing and inspections of underground piping at all facilities with underground piping that has been installed for more than five years and that carries anhydrous ammonia. Any disrepair identified by inspections shall be repaired by MFA as soon as practicable.

d. By no later than one year after the Effective Date of the Consent Decree, MFA shall certify that it has addressed all additional violations of RAGAGEP and industry standards identified in the inspection reports documenting inspections that occurred between September 12, 2012 and April 28, 2015 at the Centralia, Jefferson City, Rich Hill, and New Cambria facilities. These violations are:

- i. Failing to use a saddle that extends over 1/3 of the circumference of each bulk tank in the Centralia Facility in violation of ANSKI K61.1-1999 Section 6.4.2;
- ii. Failing to keep a bulk storage vessel free of rust at the Jefferson City Facility in violation of ANSI K61.1-1999 Section 5.12;
- iii. Failing to provide effective barriers at the Rich Hill Facility in violation of ANSI K61.1-1999 Section 6.7;
- iv. Failing to use a saddle that extends over 1/3 of the circumference of each bulk tank in the Rich Hill Facility in violation of ANSKI K61.1-1999 Section 6.4.2;
- v. Failing to provide adequate emergency water at nurse tanks at the Rich Hill Facility in violation of ANSI K61.1-1999 Section 11.6.2;
- vi. Failing to maintain painted surfaces of nurse tanks in good condition at the Rich Hill Facility in violation ANSI K61.1-1999;
- vii. Failing to have a greater capacity pipe than the rating of the excess flow valve at the New Cambria Facility in violation of ANSI K61.1-1999 Section 5.5.4

7. Update RMPs.

a. By no later than one month after the Effective Date of the Consent Decree, MFA shall update Section 6 of the RMP for each Facility that failed to report an accident meeting the requirements set forth in 40 C.F.R. §§ 68.42 and 68.155. These Facilities are the Centralia Facility, the Rock Port Facility, the Pattonsburg Facility, the Hale Facility, and the Saint Joseph Facility. These updates shall also include reports of accidents not within the regulatory five year time period, but in any case no earlier than 2010. Any accident reported that is not within the regulatory five year time period may be removed from the RMP after one year from the update of the RMP.

b. By no later than one month after the Effective Date of the Consent Decree, MFA shall correct Section 9 and the Executive Summary of the RMP for the Centralia Facility, the Martinsburg Facility, and the Rich Hill Facility to reflect current emergency response capability, if any, or reliance on local community first responders for releases of RMP chemicals, in compliance with the requirements of 40 C.F.R. §§ 68.155 and 68.180.

8. First Report on Actions Taken. MFA shall submit a first report on actions taken that includes: a list of actions taken in the eighteen months prior to the Effective Date, at the corporate and facility level, to achieve or effectuate compliance with the Compliance Requirements provided in Appendix B and the Consent Decree; an accessible and reviewable record of the current MFA equipment maintenance system which documents the replacement dates of pressure relief devices and hoses, as described in Paragraph 6.a, the scheduled replacement dates for such equipment, and the record of equipment replaced within the last 2 years; and a list of actions planned to be taken within the 18 months after the Effective Date to

achieve compliance. The first report on actions taken shall be submitted within 8 months after the Effective Date.

9. Public Information. By no later than three months after the Effective Date of the Consent Decree, MFA shall create and maintain a publicly available portion of its corporate website listing Covered Accidents/Releases at MFA facilities (“Public Release Information Page”). The Public Release Information Page must include information on any accidental release occurring after lodging of the Consent Decree that requires reporting pursuant to 40 C.F.R. § 68.42.

10. For each Covered Accidental Release, the Public Release Information Page must:

- a. Link to an electronic version of the triggering report submitted to the United States;
- b. Include a narrative summary that includes the approximate location and estimated volume of the Covered Release, the types of products released; the persons injured, if any, and a brief description of MFA’s response to the Covered Release; and
- c. Include the summary of incident investigations and documentation of any findings, resolutions, and corrective actions required by 40 C.F.R §§ 68.60 (c) & (d); 68.81 (d) & (e).

11. As described in Appendix A, Paragraph 26, for each individual audit MFA shall post the Findings and its responses to said Findings on a publicly available portion of the company’s website, to be maintained for five years.

APPENDIX C: SUPPLEMENTAL ENVIRONMENTAL PROJECT

MFA has developed and shall install new technology for an electronic shut-off system (“ESOS”) that includes emergency shut-off valves (“ESVs”), E-Stop emergency stop push buttons (“E-Stops”), and a remote stop-button transmitter that can be worn by employees. This technology will reduce the risks of a potential release incident by immediately shutting down all anhydrous ammonia processes within the facility. Further, the multiple shut-off access points, between the remote transmitter available to employees and the numerous E-Stops placed near the potential release points, allow for immediate, overlapping responses to protect human health and the environment. In particular, it is designed to shut down the flow and availability of anhydrous ammonia, both in its liquid and vapor states, at all receiving and load-out stations in the event of a release incident. Installing these ESOSs will help to ensure release incidents are limited in scope and duration, preventing large or continuing releases, in turn protecting the safety of employees, customers, and first responders who may be on site and the general public in the communities in which the ESOS-equipped facilities will be located. MFA has committed to spend \$400,000 in implementing this technology at a minimum of fifty-three MFA facilities located throughout Missouri and Iowa. The company has estimated that each ESOS system will cost \$7,000-10,000 per facility installation.

The ESOS is an innovative and system-wide technological improvement, consistent with the purpose of the Part 68 Chemical Accident Prevention Provisions, that will exceed the standards currently required by 40 C.F.R. § 68.48 and the current recognized and generally accepted good engineering practices (“RAGAGEP”) invoked in § 68.48. ESOS technology is not required by operation of any law or regulation. This proposal represents the development and implementation of pollution prevention technology, pushing RAGAGEP beyond current standards for ESV actuation systems. Additionally, while the ESOS is being developed for use at anhydrous ammonia receiving and distribution facilities, this technology may likely be appropriate for use in other industries involving hazardous substances stored in bulk, under pressure, and in liquid and/or gaseous states.

Project Description

Each ESOS will include ESVs, E-Stops, and a remote stop-button transmitter that can be worn by an employee. Subject to the specific plant configurations at each facility, the ESVs will be installed on the inflow and outflow vapor and liquid lines at each of the facility’s load-out risers, bulk tanks, receiving bulkheads, and, at applicable facilities with rail service, the rail receiving stand. The E-Stops may be located at the receiving bulkhead, the liquid pump, on the load-out platform, at the top and base of the rail receiving stand, where applicable, or other locations within a facility, subject to specific plant configurations, as well as appropriate evacuation routes at each facility. The remote transmitter and E-Stops are designed to close all ESVs and shutdown the liquid and vapor pumps facility-wide.

MFA shall install, operate and maintain ESOSs at the fifty-three facilities listed below. Beginning at the Effective Date, MFA shall install ESOSs at fifteen or more facilities each year until all installations have been completed. Within the first year after the Effective Date, MFA shall complete installations at the three facilities marked with an asterisk (*) below. All installations shall be completed within three years after the Effective Date. As required by Paragraph 27.c of the Consent Decree, MFA shall include in its quarterly reports an explanation of the progress it has made toward implementation of the SEP, including a list of the facilities at which it has installed ESOSs in the past quarter and a list of facilities where it plans to implement the SEP in the next quarter.

| LOCATION | ADDRESS | EPA FACILITY IDENTIFIER |
|---|---|-------------------------|
| MFA Agri Service - Albany | 408 South Birch, Albany, MO 64402-1599 | 1000 0004 7969 |
| MFA Anhydrous Plant - Barnard | 29317 State Hwy M, Barnard, MO 64423 | 1000 0020 6289 |
| MFA Bulk Plant - Bosworth | 200 S. Kansas, Bosworth, MO 64623 | 1000 0002 7927 |
| MFA Bulk Fertilizer Plant - Brookfield | 27635 Hwy. FF, Brookfield, MO 64628 | 1000 0004 8441 |
| MFA Agri Service - Burlington Junction | 1101 W. Main St., Burlington Junction, MO 64428 | 1000 0019 7271 |
| MFA Agri Service - Conception Junction | Main and Wabash, Conception Junction, MO 64434 | 1000 0004 7479 |
| MFA Agri Service - Corydon | 2184 Hwy. 2 West, Corydon, IA 50060 | 1000 0004 8904 |
| MFA Agri Service - Gallatin | 24395 Hwy. 6, Gallatin, MO 64640 | 1000 0004 7148 |
| MFA Agri Service - Guilford | 101 State Hwy. M, Guilford, MO 64457 | 1000 0004 8058 |
| MFA Bulk Plant - Hale | 30749 J Hwy., Hale, MO 64643 | 1000 0019 8449 |
| MFA Agri Service - Laredo | 410 East 2nd Street, Laredo, MO 64652 | 1000 0004 7852 |
| MFA Agri Service - Leon | 18865 US Hwy. 69, Leon, IA, 50144 | 1000 0004 7996 |
| MFA Agri Service - Lineville | 100 East County Road, Lineville, IA 50147 | 1000 0004 7898 |
| MFA Agri Service – Maryville* | 221 N. Depot, Maryville, MO 64468 | 1000 0004 5934 |
| MFA Agri Service - Maysville | 1302 S. Water St., Maysville, MO 64469 | 1000 0019 8485 |
| MFA Agri Service – Milan* | 914 E. 3rd St., Milan, MO 63556 | 1000 0022 4143 |
| MFA Agri Service - Pattonsburg South | 18563 US Hwy 69, Pattonsburg, MO 64670 | 1000 0018 2697 |
| MFA Agri Service - Sheridan | 103 East Jefferson, Sheridan, MO 64486 | 1000 0004 6283 |
| MFA Agri Service - St. Joseph | 2715 South 6th Street, St. Joseph, MO 64501 | 1000 0005 2042 |
| MFA Bulk Plant - Tindall | 700 Metcalf, Tindall, MO 64683 | 1000 0004 8584 |
| MFA Agri Service - Cedar Creek | 2887 County Road 269, Columbia, MO 65202 | 1000 0017 8158 |
| MFA Agri Service - Centralia W. Liq Plant | 22501 North March Road, Centralia, MO 65240 | 1000 0007 6473 |
| MFA Ammonia Plant - Clark | 1020 County Road 2665, Clark, MO 65243 | 1000 0022 2831 |

| | | |
|---|--|----------------|
| MFA Agri Service - Elsberry | 402 N. Main St., Elsberry, MO 63343-1336 | 1000 0003 2993 |
| MFA Agri Service - Marion County (Hannibal) | 6040 Hwy. 24, Hannibal, MO 63401 | 1000 0002 5947 |
| MFA Agri Service - Kahoka | 22967 E. Main St., Kahoka, MO 63445 | 1000 0002 6811 |
| MFA Bulk Plant Heetco | 12461 Hwy 6, LaBelle, MO 63447 | 1000 0011 4663 |
| MFA Anhydrous Ammonia Plant - Ladonna | Audrain Road 530, Ladonna, MO 63352 | 1000 0002 6492 |
| MFA Agri Service B/P (LaPlata) | 29098 July Road, LaPlata, MO 63549 | 1000 0021 7696 |
| MFA Agri Service - Martinsburg (Bulk Plant) | 15778 Audrain Road 741, Martinsburg, MO 65264 | 1000 0005 5496 |
| MFA Agri Service - Memphis | 300 South Ridge Street, Memphis, MO 63555 | 1000 0002 7311 |
| MFA Agri Service - Mexico | 2816 East Liberty, Mexico, MO 65265 | 1000 0006 0499 |
| MFA Agri Service - Montgomery City (Bulk Plant) | 335 Short Street, Montgomery City, MO 63361 | 1000 0003 2724 |
| MFA Anhydrous Ammonia Plant - New Cambria | 29400 Colony Ave., New Cambria, MO 63558 | 1000 0018 0582 |
| MFA Bulk Plant - Shelbina | Hwy. 36 West, Shelbina, MO 63468- 1219 | 1000 0002 7972 |
| MFA Bulk Plant – Vandalia* | 800 W. Washington, Vandalia, MO 63382 | 1000 0002 6893 |
| MFA Agri Service - Alma | 106 E. Collins, Alma, MO 64001-0137 | 1000 0003 1048 |
| Mid-Missouri Agri Service - Emma | 32102 Emma Road, Emma, MO 65327 | 1000 0020 4307 |
| MFA Agri Service - Glasgow | 303 Industrial Drive, Glasgow, MO 65254 | 1000 0014 5577 |
| MFA Bulk Plant - Higginsville | W. 24th Terrace, Higginsville, MO 64037 | 1000 0002 6919 |
| MFA Agri Service - Jefferson City | 1009 4th Street, Jefferson City, MO 65101 | 1000 0003 2699 |
| MFA Bulk Plant - Levasy | 36906 E. 24 Hwy, Levasy, MO 64066 | 1000 0003 3108 |
| MFA Anhydrous Ammonia Plant - Lexington (Myrick) | 10601 Highway 224, Lexington, MO 64067 | 1000 0003 2957 |
| MFA Agri Service - Lone Elm | 10672 Hwy B, Bunceton, MO 65237 | 1000 0015 8526 |
| MFA Agri Service - Norborne | 11791 Hwy. 10, Norborne, MO 64668 | 1000 0002 6232 |
| MFA Agri Service - Salisbury | Front & Mill, Salisbury, MO 65281 | 1000 0002 8025 |
| MFA Ammonia Plant - Sedalia | 23819 Oak Grove Ln., Sedalia, MO 65301 | 1000 0022 2859 |
| MFA Bulk Plant - Tipton | 74986 Hwy. 50, Tipton, MO 65081 | 1000 0002 6134 |
| MFA Agri Service - Chaffee | 1980 Cummins, Chaffee, MO 63740 | 1000 0003 3028 |
| MFA Agri Service - Jackson | 1770 Lee Avenue, Jackson, MO 63755 | 1000 0003 3019 |
| MFA Agri Service Owensville | 1312 W. Hwy 28, Owensville, MO 65066 | 1000 0022 7845 |

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| MFA Anhydrous Plant - Perryville | 3501 South Hwy. 61, Perryville, MO 63775 | 1000 0003 2868 |
| MFA Agri Service - Nevada | 903 E. Hickory St., Nevada, MO 64772 | 1000 0007 2342 |

Appendix D: MFA Inc. and MFA Enterprises Inc. List of Facilities

| LOCATION | ADDRESS | EPA FACILITY IDENTIFIER |
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| MFA Agri Service - Albany | 408 South Birch, Albany, MO 64402-1599 | 1000 0004 7969 |
| MFA Anhydrous Plant (Barnard) | 29317 State Hwy M, Barnard, MO 64423 | 1000 0020 6289 |
| MFA Bulk Plant - Bosworth | 200 S. Kansas, Bosworth, MO 64623 | 1000 0002 7927 |
| MFA Bulk Fertilizer Plant – Brookfield | 27635 Hwy. FF, Brookfield, MO 64628 | 1000 0004 8441 |
| MFA Agri Service - Burlington Junction | 1101 W. Main St., Burlington Junction, MO 64428 | 1000 0019 7271 |
| MFA Agri Service - Conception Junction | Main and Wabash, Conception Junction, MO 64434 | 1000 0004 7479 |
| MFA Agri Service - Corydon | 2184 Hwy. 2 West, Corydon, IA 50060 | 1000 0004 8904 |
| MFA Agri Service - Gallatin | 24395 Hwy. 6, Gallatin, MO 64640 | 1000 0004 7148 |
| MFA Agri Service - Grant City | 104 N. High Street, Grant City, MO 64456 | 1000 0017 5302 |
| MFA Agri Service - Guilford | 101 State Hwy. M, Guilford, MO 64457 | 1000 0004 8058 |
| MFA Bulk Plant - Hale | 30749 J Hwy., Hale, MO 64643 | 1000 0019 8449 |
| MFA Agri Service - Hamilton | North Hughes Street, 313 N. Davis Street, Hamilton, MO 64644 | 1000 0019 7887 |
| MFA Agri Service King City | 4698 US Highway 169 King City, MO | 1000 0020 5976 |
| MFA Agri Service - Laredo | 410 East 2nd Street, Laredo, MO 64652 | 1000 0004 7852 |
| MFA Agri Service - Leon | 18865 US Hwy. 69, Leon, IA, 50144 | 1000 0004 7996 |

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| MFA Agri Service - Lineville | 100 East County Road, Lineville, IA 50147 | 1000 0004 7898 |
| MFA Agri Service - Maryville | 221 N. Depot, Maryville, MO 64468 | 1000 0004 5934 |
| MFA Agri Service - Maysville | 1302 S. Water St., Maysville, MO 64469 | 1000 0019 8485 |
| MFA Agri Service - Milan | 914 E. 3rd St., Milan, MO 63556 | 1000 0022 4143 |
| MFA Agri Service - Pattonsburg South | 18563 US Hwy 69, Pattonsburg, MO 64670 | 1000 0018 2697 |
| MFA Agri Service - Savannah Anhydrous Plant | 10497 Hwy 71, Savannah, MO 64485 | 1000 0023 6871 |
| MFA Agri Service - Sheridan | 103 East Jefferson, Sheridan, MO 64486 | 1000 0004 6283 |
| MFA Agri Service - St. Joseph | 2715 South 6th Street, St. Joseph, MO 64501 | 1000 0005 2042 |
| MFA Bulk Plant - Tindall | 700 Metcalf, Tindall, MO 64683 | 1000 0004 8584 |
| Atchison County AGChoice Ammonia Plant - Coin | 1964 270 Street, Coin, IA 51636 | 1000 0022 0405 |
| MFA Agri Service - Fairfax (AGChoice - Parking) | 26245 N. Hwy. 59, Fairfax, MO 64446 | 1000 0004 8851 |
| Atchison County AGChoice Bulk Plant – Fairfax | Hwy. 59, Fairfax, MO 64446 | 1000 0004 8254 |
| Atchison County AGChoice – Rock Port | 17287 West Hwy. 136, Rock Port, MO 64482 | 1000 0014 2188 |
| MFA Agri Service - Cedar Creek | 2887 County Road 269, Columbia, MO 65202 | 1000 0017 8158 |
| MFA Agri Service - West Liquid Plant – Centralia | 22501 North March Road, Centralia, MO 65240 | 1000 0007 6473 |
| MFA Ammonia Plant - Clark | 1020 County Road 2665, Clark, MO 65243 | 1000 0022 2831 |
| MFA Agri Service - Elsberry | 402 N. Main St., Elsberry, MO 63343-1336 | 1000 0003 2993 |

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| MFA Agri Service - Marion County (Hannibal) | 6040 Hwy. 24, Hannibal, MO 63401 | 1000 0002 5947 |
| MFA Agri Service - Kahoka | Hwy. 136 E., Kahoka, MO 63445 | 1000 0002 6811 |
| MFA Bulk Plant Heetco | 12461 Hwy 6, LaBelle, MO 63447 | 1000 0011 4663 |
| MFA Anhydrous Ammonia Plant – Laddonia | Audrain Road 530, Ladonna, MO 63352 | 1000 0002 6492 |
| MFA Agri Service B/P (LaPlata) | 29098 July Road, LaPlata, MO 63549 | 1000 0021 7696 |
| MFA Agri Service - Martinsburg (Bulk Plant) | 15778 Audrain Road 741, Martinsburg, MO 65264 | 1000 0005 5496 |
| MFA Agri Service - Memphis | 362 South Ridge Street, Memphis, MO 63555 | 1000 0002 7311 |
| MFA Agri Service - Mexico | 2816 East Liberty, Mexico, MO 65265 | 1000 0006 0499 |
| MFA Agri Service - Montgomery City (Bulk Plant) | 335 Short Street, Montgomery City, MO 63361 | 1000 0003 2724 |
| MFA Anhydrous Ammonia Plant - New Cambria | 29400 Colony Ave., New Cambria, MO 63558 | 1000 0018 0582 |
| MFA Bulk Plant - Shelbina | Hwy. 36 West, Shelbina, MO 63468-1219 | 1000 0002 7972 |
| MFA Bulk Plant - Vandalia | 800 W. Washington, Vandalia, MO 63382 | 1000 0002 6893 |
| MFA Bulk Fertilizer Plant – Wentzville | 1016 Wilmer Road, Wentzville, MO 63385 | 1000 0003 3037 |
| MFA Agri Service - Alma | 106 E. Collins, Alma, MO 64001-0137 | 1000 0003 1048 |
| Mid-Missouri Agri Service – Emma | 32102 Emma Road, Emma, MO 65327 | 1000 0020 4307 |
| MFA Agri Service - Glasgow | 303 Industrial Drive, Glasgow, MO 65254 | 1000 0014 5577 |
| MFA Bulk Plant - Higginsville | W. 24th Terrace, Higginsville, MO 64037 | 1000 0002 6919 |

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| MFA Agri Service - Jefferson City | 1009 4th Street, Jefferson City, MO 65101 | 1000 0003 2699 |
| MFA Bulk Plant - Levasy | 36906 E. 24 Hwy, Levasy, MO 64066 | 1000 0003 3108 |
| MFA Anhydrous Ammonia Plant - Lexington ("Myrick") | 10601 Highway 224, Lexington, MO 64067 | 1000 0003 2957 |
| MFA Agri Service - Lone Elm | 10672 Hwy B, Bunceton, MO 65237 | 1000 0015 8526 |
| MFA Anhydrous Ammonia Plant - New Franklin | 314 South Missouri, New Franklin, MO 65274 | 1000 0002 6697 |
| MFA Agri Service - Norborne | 11791 Hwy. 10, Norborne, MO 64668 | 1000 0002 6232 |
| MFA Agri Service - Orrick | 208 E North Front Street Orrick, MO 64077 | 1000 0018 7736 |
| MFA Agri Service - Salisbury | Front & Mill, Salisbury, MO 65281 | 1000 0002 8025 |
| MFA Ammonia Plant - Sedalia | 23819 Oak Grove Ln., Sedalia, MO 65301 | 1000 0022 2859 |
| MFA Bulk Plant - Tipton | 74986 Hwy. 50, Tipton, MO 65081 | 1000 0002 6134 |
| MFA Agri Service - Chaffee | 1980 Cummins, Chaffee, MO 63740 | 1000 0003 3028 |
| MFA Agri Service - Jackson | 1770 Lee Avenue, Jackson, MO 63755 | 1000 0003 3019 |
| MFA Agri Service Owensville | 1312 W. Hwy 28, Owensville, MO 65066 | 1000 0022 7845 |
| MFA Anhydrous Plant – Perryville | 3501 South Hwy. 61, Perryville, MO 63775 | 1000 0003 2868 |
| MFA Agri Service - Ste. Genevieve (Nurse Tanks) | 10940 Industrial Drive, Ste. Genevieve, MO 63670 | 1000 0003 5053 |
| MFA Agri Service - Nevada | 903 E. Hickory St., Nevada, MO 64772 | 1000 0007 2342 |
| AGChoice - Emporia | 1779 Road G, Emporia, KS 66801 | 1000 0009 6255 |

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| AGChoice – Hepler | 110 W. 3rd St, Hepler, KS 66746 | 1000 0012 3261 |
| AGChoice – Olpe | 1046 County Rd 80, Olpe, KS 66865 | 1000 0018 0715 |
| AgChoice - Osage City | 426 North Third, Osage City, KS 66523 | 1000 0011 0177 |
| AGChoice - Parsons | 3205 Boyd St., Parsons, KS 67357 | 1000 0007 1441 |
| AGChoice – Weir | 9197 NE 50th St, Weir, KS 66781 | 1000 0006 9837 |
| West Central AGRIServices, LLC. – Adrian | S. 71 Highway, RR#3, Box 335, Adrian, MO 64720 | 1000 0012 0807 |
| West Central AGRIServices, LLC. – Centerview | 103 S. Main, P.O. Box 66, Centerview, MO 64019 | 1000 0015 0962 |
| West Central AGRIServices, LLC. – Chilhowee | 209 East Barnum, P.O. Box 67, Chilhowee, MO 64733 | 1000 0011 2825 |
| West Central AGRIServices – Harrisonville | 28101 S. State Rt. TT, Harrisonville, MO 64701 | 1000 0016 8524 |
| West Central AGRIServices, LLC. - Rich Hill | 700 East Walnut, Rich Hill, MO 64779 | 1000 0006 9891 |