



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 10 2013

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Guidance on Streamlining Oversight in Civil Settlements

FROM: Susan Shinkman, Director
Office of Civil Enforcement

David J. Kling, Director
Federal Facilities Enforcement Office

TO: Office of Civil Enforcement Division Directors
Regional Counsel
Regional Enforcement Directors and Division Directors
Regional Enforcement Coordinators

I. Introduction

This guidance reflects the United States Environmental Protection Agency's (EPA) and the Department of Justice's (DOJ) goal of managing the resources available for monitoring settlements efficiently while continuing to ensure that defendants expeditiously achieve compliance.¹ In an era of decreasing resources, case teams report that overseeing the implementation of settlements taxes their limited resources to a level that hinders the Agency's ability to attend to other business, primarily new cases. In response to these concerns, EPA's Office of Civil Enforcement convened an EPA/DOJ workgroup to consider those settlement provisions that generally create the more substantive oversight obligations and to develop options that could reduce oversight burdens while ensuring that violators achieve compliance in a timely manner.²

The concepts set forth below are recommended for incorporation into the overall critical analysis a case team undertakes prior to and during each settlement negotiation, in order to ensure a result that is protective of human health and the environment but that also minimizes the oversight burden on the Agency. To effectively implement a streamlining approach to oversight, this guidance takes into account the wide variety of cases and individual nature of each case. While none of the concepts discussed in this guidance is mandatory for any given settlement, each case team should seriously consider whether any are appropriate for a particular case.³ This guidance is a dynamic document which will continue to evolve as new streamlining measures are identified.

II. Analysis

Investment in simple changes could significantly reduce the overall oversight burden of the Agency. Prior to initiating negotiations, case teams should consider what level of oversight may be needed to determine whether a defendant is complying with the settlement terms and achieving compliance. As part of this analysis, case teams should keep in mind that many regulated entities do achieve compliance on their own without being the subject of an enforcement action and thus without the benefit of EPA consultation (*e.g.*, other sources comply with an air emission limit without obtaining EPA approval of the design of the control equipment).⁴

Below are some of the common settlement components that may have a substantial impact on the Agency's oversight resources required in any given case. The Appendices provide language from existing settlements that illustrate the concepts below, when available.

A. Tracking Settlement Oversight

Case teams should consider appropriate methods to streamline tracking of settlement requirements. A well crafted spreadsheet helps EPA and defendants monitor compliance with the settlement obligations and allows for comprehensive electronic consent decree tracking and management. It also would provide protected electronic uploads and instant access to information such as compliance status with consent decree, stipulated penalties received, and documents reviewed. In addition, it would promote consistency both within and among the regions.

Importantly, in addition to streamlining settlement implementation, the development of spreadsheets before or during negotiations may assist the case team in evaluating whether the obligations imposed by the proposed settlement are necessary, and if so, whether they have appropriate deadlines and objective criteria. In other words, development of the spreadsheet as part of crafting a proposed settlement may help illustrate the entire oversight burden and perhaps help the case team focus on those terms that are key to achieving compliance and protecting human health and the environment.

When crafting a spreadsheet, the case team should consider the following best practices:

1. The settlement team should have an agreed upon spreadsheet that lists requirements and due dates. *See* Appendix A for an example of such a spreadsheet.
2. Also the settlement team should agree on a consistent electronic system which allows for electronic submittals and responses in advance. *See* Section II.E for more discussion about electronic reporting.
3. Finally, each deliverable in the settlement should have a name and a code. When the parties upload a document, they will put the code into a form sending it electronically to the correct place in the database.

B. Injunctive Relief

Injunctive relief is the most critical part of any settlement, as it is the means by which the government ensures that the defendant achieves compliance with environmental laws and that the public receives the protection those laws are meant to provide.⁵ As such, the injunctive relief

provisions of a settlement, and the defendant's ability to implement them in an expeditious, comprehensive and competent manner, influence the particulars of many settlement provisions (*e.g.*, control requirements, milestones, EPA-review of deliverables). A case team's determination of the appropriate level of oversight should be informed by an early and critical analysis of the injunctive relief necessary for the defendant to achieve compliance. This determination should be made on a case-by-case basis with maximum flexibility for case teams to negotiate the terms necessary to ensure timely compliance and to determine the appropriate level of oversight attendant to the injunctive relief in the settlement. In this regard, case teams should consider the answers to the following types of questions regarding injunctive relief:⁶

1. Is the injunctive relief of a complex nature requiring significant oversight to ensure correct implementation, or is it straightforward? Does the industry generally require significant assistance from EPA regarding compliance with the underlying requirement (*e.g.*, approval of long-term control plans for municipal cases)?
2. Does the nature of the injunctive relief warrant EPA approving a specific means of achieving compliance, or alternatively, should EPA establish a performance standard and allow the Defendant to decide how to achieve compliance? (*See* Appendix B, example 1.)
3. Are the requirements of the underlying environmental law clearly established (*e.g.*, numerical standards/emission limits and/or proven technology)?
4. Does the case involve a national priority? Consider how the level of oversight in the first few settlements involving a national priority may set the precedent for future settlements. Consider whether the same level of oversight is needed for later settlements, or whether the Agency's increased expertise with the industry or type of settlement supports less oversight. Consider how changing the level of oversight does or does not impact the playing field for earlier versus later settlements (*e.g.*, would reducing the EPA oversight for later settlements essentially reward companies who settled later and if so, is that fair?).⁷
5. Does the case involve innovative injunctive relief (*e.g.*, selective catalytic reduction for cement and glass industry) or monitoring?⁸ Case teams should be particularly mindful of

how these factors might affect the level of oversight. In the case of innovative injunctive relief, additional oversight may be warranted until the relief becomes a proven and effective technology. Once the technology is proven, less oversight would be required thereafter. Consider how this relates to (4) above, and the use of innovative technology in national priority settlements. (*See* Appendix B, example 2.)

6. Has the defendant demonstrated the ability to implement injunctive relief expeditiously, comprehensively and with a minimum level of oversight? Does the defendant have a comprehensive environmental management system (EMS) in place, or otherwise have a corporate structure that emphasizes environmental obligations with a corresponding financial commitment?

Considering all the above, a case team should evaluate whether performance standards (*e.g.*, parts per million (ppm)), design standards (*e.g.*, waste pond of a certain size), test and set (*e.g.*, numerical limits finalized after testing of equipment), or a combination thereof, are appropriate for any given settlement. Generally, test and set requirements require the most EPA oversight, while performance standards require the least. As part of this analysis the case team should consider estimating the Agency resources needed to approve and/or implement the various options.⁹ (*See* Appendix B, example 3.)

In addition, case teams should consider carefully, and discuss with the defendant during negotiations the requirements of the injunctive relief and any criteria by which compliance will be assessed (*e.g.*, emission or effluent limits, performance standards, design criteria). The parties should consider the potential areas of disagreement and the settlement should clearly set forth the defendant's responsibilities for a particular submission or compliance milestone in order to forestall potential disputes in the future over adequacy of compliance. The Agency's oversight burden will be reduced by providing the defendant with clear criteria so it knows what it should submit or build (and therefore what EPA will consider when approving a deliverable or other compliance milestone).

C. Milestones and Stipulated Penalties

Milestones are an integral part of the injunctive relief package that ensure a defendant achieves compliance in a timely manner. Nonetheless, reviewing deliverables and tracking the completion of each milestone, as well as seeking stipulated penalties for any missed milestones, may increase the oversight burden of the Agency.¹⁰ Case teams should only include milestones that are objectively verifiable and necessary to ensure the successful implementation of the injunctive relief. Case teams should consider the answers to the following questions:

Frequency of milestones

1. Which milestones are necessary to ensure that the defendant stays on schedule and implements the injunctive relief in compliance with the settlement terms? Analyze discrete components of proposed relief to determine the necessity of each milestone.
2. Consider crafting the settlement so that the number of milestones with deliverables EPA is required to review can be reduced if the defendant demonstrates sufficient compliance with the earlier deliverables/milestones. For example, if the settlement requires the defendant to complete a large number of similar construction projects and the case team believes that each project will initially require EPA's review; consider whether it will be necessary to continue reviewing each project once the defendant demonstrates its ability to timely and successfully complete the construction. In other words, once the defendant has demonstrated its ability to meet specific critical milestones satisfactorily and on time, consider providing EPA the discretion to eliminate the review of those specific milestones for similar projects. (*See Appendix C, example 1.*)

Stipulated Penalties

3. Consider whether assessing higher stipulated penalties for critical milestones (*e.g.*, meet X ppm within five years) provides the defendant sufficient incentive to comply such that earlier milestones (*e.g.*, buy equipment by Y date) can be eliminated. If crafted correctly, the prospect of paying a significantly higher stipulated penalty for missing a critical (or more meaningful) milestone might provide the defendant a stronger incentive than that provided by more frequent milestones with lower stipulated penalties. (*See Appendix C, example 2.*) This approach also may be more attractive to defendants because it provides them more flexibility between milestones.
4. Consider the compliance history of the defendant and any appropriate parent company or subsidiary (*e.g.*, repeat offender), as well as the defendant's efforts to return to compliance during settlement negotiations, when determining what milestones and stipulated penalties may be appropriate.

D. Review of Deliverables

EPA has to balance its desire to ensure that the settlement is properly implemented with the need to move on to the next case that will bring another defendant into compliance and further improve public health, welfare, and the environment. As noted above, case teams should keep in mind that many regulated entities achieve compliance on their own without constant EPA oversight of their efforts.

Case teams should, based on a case specific judgment, require the most efficient (*i.e.*, least resource-intensive) level of review of deliverables necessary to ensure successful implementation of the injunctive relief. The case team should consider what the implicit expectations are when EPA receives a deliverable, even if the settlement terms do not require EPA to “approve” it before the defendant may move forward – in other words, should we receive deliverables we do not plan to review (and comment on) in a timely manner? Case teams should also consider whether to include self-certification or third-party certification in lieu of additional deliverables for EPA to review for each milestone. (*See Appendix D, examples 1 and 2.*) When determining the appropriate level of review, case teams should consider the answers to the following questions:

1. Does the case team believe that it is necessary to review a particular deliverable and approve the plans/next steps before the defendant is allowed to proceed? Referred to as “review and approve,” this approach imposes the highest burden on EPA. Although a “review and approve” approach may be appropriate under certain circumstances (*e.g.*, cases involving complex injunctive relief or new untested technology/injunctive relief where each succeeding step is dependent on successful implementation of the previous step), case teams should balance the resources required to implement “review and approve” with the benefits to be gained before incorporating it into a settlement.
2. Does the case team only want to have the opportunity to review the deliverable, and comment if appropriate, but does not believe it is necessary for the defendant to wait to hear from EPA before moving on to the next step in the settlement? Consider how the case team wants the defendant to respond to EPA’s comments. Referred to as “review and comment” this approach imposes a lower burden on EPA. (*See Appendix D, examples 3 and 4.*)
3. Consider reducing the number of deliverables requiring EPA’s “review and approval” and instead require self-implementation of injunctive relief without EPA’s approval of a particular deliverable. But also consider reserving EPA’s ability to require some future change if a deliverable is reviewed at a later date and problems are discovered. This approach may be most appropriate where any changes EPA may require later are not too costly (*e.g.*, for sampling plans). (*See Appendix D, example 5.*)

4. Analyze what aspects of each deliverable must be reviewed and why. Does the case team feel it is necessary to identify deficiencies and data gaps in the defendant's proposals before the defendant implements the injunctive relief?
5. Is it possible to have different degrees of review at different milestones in the process, with perhaps earlier deliverables requiring less review, but final compliance plans or certifications of compliance requiring more review?
6. Consider adding language to the settlement that clearly states that while EPA may comment on a deliverable, the Agency's silence is not implicit approval or acceptance of the deliverable.
7. Consider including language that sets forth the defendant's affirmative obligations regarding deliverables, but is silent as to actions EPA may or may not take. (*See above.*)
8. Ensure the settlement does not imply that EPA approval of a deliverable constitutes either (i) assurance of the success of later milestone (*e.g.*, ultimate compliance with a performance standard if an EPA-approved design is utilized), or (ii) EPA agreement that compliance with a later milestone is excused if EPA approved the earlier deliverable (*e.g.*, the defendant is separately required to achieve the later milestone, regardless of whether it obtained earlier EPA-approval of a related deliverable).

E. Monitoring, Reporting and Record-keeping

Monitoring, reporting and record-keeping requirements of a settlement can also affect EPA's oversight burden. Monitoring generally refers to the defendant's measurement of outputs, including emissions, releases and discharges of pollutants from a facility. Reporting refers to the submissions made to the Agency regarding compliance with the settlement. Issues relevant to monitoring and reporting often include the **amount** of information to be collected/monitored; the **frequency** of a report/submission; and the **format** required for the submission. Record-keeping refers to the defendant's retaining the records required by the settlement in the appropriate format and for the appropriate duration of time.

To the maximum extent possible, settlements should include components of self-monitoring of the parameters included in injunctive relief provisions, self-certification of the results of self-monitoring and reporting of data to the Agency.¹¹ When determining the appropriate monitoring, reporting and record-keeping requirements, case teams should consider the answers to the following questions:

Monitoring

1. How relevant is the form of monitoring to the effort to streamline EPA oversight of the settlement? Are some forms of monitoring more accurate and/or do they provide sufficiently reliable information (*e.g.*, continuous emissions monitors) that EPA would be comfortable with fewer reports if they were based on this monitoring system?
2. What monitoring and reporting is already required by law? Is additional or different monitoring necessary or appropriate?

Record-keeping

3. Consider whether the format of records retained by the defendant would make EPA oversight easier. As a general matter, maintenance of records electronically facilitates the submission of the data to EPA, and internal dissemination among case team members. It also enhances the ability of case teams to organize, collate and analyze data (*see below* re: electronic submissions of reports).
4. Consider how the form of the records collected and maintained by the defendant impacts the reporting requirements (*see below*).
5. A common record-retention time frame is five years from the date of termination of the decree. In addition, the settlement should include a provision requiring the defendant to notify EPA prior to destroying any records.

Reporting

6. Are the reporting requirements necessary for ensuring successful implementation of the injunctive relief?
7. Consider the amount of information necessary to track progress of implementation and compliance with the settlement. What should be reported to EPA versus only recorded and made available by the defendant? Consider whether the defendant has a history of self-reporting or self-monitoring failures.
8. In general, the reporting frequency should be semi-annual, unless case-specific circumstances dictate more or less frequent reporting (*e.g.*, more frequent reporting might be appropriate in cases where a significant amount of construction or other activity is necessary, such as Clean Water Act municipal cases).
9. In cases where more frequent reporting initially may be appropriate for some phases of the injunctive relief, consider whether less frequent reporting may be appropriate during other phases.

10. Consider a gradual reduction in reporting by specifying conditions that may warrant a reduction in reporting frequency - either automatically or upon EPA's consent. For example, after a defendant submits four biannual reports demonstrating its compliance with the settlement, consider whether the reporting frequency can automatically be converted to annual. Similarly, consider an automatic increase in reporting requirements if a violation occurs.
11. In general, settlements should require self-reporting of violations of the settlement in the regular progress reports. However, if progress reports are submitted infrequently (*e.g.*, semi-annually or annually), consider requiring more immediate reporting of violations that would be critical to keeping injunctive relief moving on track. In addition, our settlements commonly require more immediate reporting for violations that might pose a threat to health or the environment (or for which a defendant may wish to claim force majeure). Case teams should also be aware of reporting requirements outside the settlement; some excess emissions may need to be reported within 24 hours. (*See also* Stipulated Penalties above.)
12. Case teams should balance the frequency of general reporting with the self-reporting of violations. What combination is necessary to keep the defendant on track (*e.g.*, a comprehensive annual report, but also inform EPA within X days of missing a construction milestone or other violations)?
13. Consider whether the form of records kept by the defendant would justify less frequent reporting (*e.g.*, electronic records that could easily be forwarded to EPA upon request).
14. Review reporting requirements to ensure that the data required to be reported provides clear indications as to the implementation of the injunctive relief. Case teams should keep in mind during negotiations that it is the quality of the report rather than the quantity of reports that best assists case teams in assessing compliance with the injunctive relief. To this end, it is important to clearly communicate to the defendants the importance of providing quality reports. To the extent possible, case teams should provide the defendant with examples of the preferred reporting formats.
15. For single facility cases, it is generally appropriate to combine all reporting requirements into a single streamlined periodic report (*i.e.*, progress report). (*See* Appendix E, examples 1 and 2.) For multi-facility cases, consider whether to require a single report for the entire settlement or a separate report for each facility.
16. Consider options for electronic submissions of data (*i.e.*, the submission of data through any means which does not require submission of paper documents).¹² Electronic

submissions can be accomplished through numerous mechanisms, such as email, submission of a DVD or thumb drive, or through creation of an electronic portal. (*See Appendix E, example 3, for language re electronic portal.*) Electronic submissions make it easier for EPA to independently analyze the information supporting the report, as appropriate. Even for settlements that are already final, case teams may want to consider revising them to require or allow for optional electronic submission of reports and data. (*See Appendix E, example 4.*)

17. If local communities affected by the violations express interest in the case (or the remedy), consider the option of having the defendant publish relevant information on a website or provide it in another publically available location. This option may be particularly attractive to communities with environmental justice concerns because these communities often feel they do not have access to relevant information. Having the defendant publish available information for the interested public can provide additional incentive to ensure compliance with the settlement. In addition, having information available to the public reduces the burden on EPA responding to multiple information requests.

Consider the following reporting practices:

- a. Require information to be submitted in a simple, searchable, easily-digestible form, and require an executive summary.
- b. Provide an appropriate list of recipients for reports. For example, if reports are in hard copy and voluminous, fewer recipients may be appropriate. Utilizing electronic submissions makes it easier to include multiple recipients.
- c. Consider negotiating the form of the report in advance and attaching it as an appendix to the settlement.
- d. Require that the defendant clearly identify whether the submittal contains confidential business information (CBI) or other privileged material, and require segregation of CBI or other privileged material from the rest of the report. In addition, consider requiring the defendant to clearly articulate its justification for its CBI claim, or even to substantiate every element of its CBI claim in its initial submission, or it is deemed waived.¹³

F. Modification of Settlements

Modifying settlements can increase the resource burden on the case team if the modification requires extensive negotiation and/or judicial approval after the decree has been entered. Settlement terms with the greatest potential for modifications may include: the type of injunctive relief; the frequency and scope of monitoring; and the variability of reporting requirements. Ideally, modifications of settlements should not be necessary. However, since modifications cannot be avoided altogether, the case team can minimize the resource burden associated with a modification by identifying in the settlement those obligations with the potential for modification and avoiding ambiguous terminology which may tend to complicate the modification process. The case team should consider the following questions:

1. Does the settlement identify provisions that are likely to require modification in the future? Can the case team clearly specify the conditions under which such modifications might be necessary? For example, the defendant may acknowledge during settlement negotiations that its facility is likely to be sold to another entity; accordingly, the case team can draft language to address that probability.
2. Are the identified areas of potential modification fundamental obligations (or a “material modification”) of the settlement that would require court approval to modify; or are those areas “non-material”?
3. Can the case team clearly differentiate provisions that require court approval from those that can be modified by the parties without court approval?
4. Does the settlement include a process to allow the parties to modify the “non-material” terms of the settlement by written agreement of the parties? (*See* Appendix F.).
5. Does the settlement require the defendant to perform a study, which may suggest a different remedial approach (*e.g.*, substituting “green” for “gray” infrastructure in a municipal sewer settlement)? The settlement document can include a process for the defendant to submit the study and request a modification. Ideally, the settlement should specify the criteria that the new proposal must meet (*e.g.*, at least as protective, completed by the same end date).

6. Does the settlement include alternative options for injunctive relief that will be selected after implementation of other settlement requirements? If so, the case team may include terms that reserve to EPA's sole discretion the implementation of a previously agreed upon alternative injunctive relief approach and make clear that EPA's decisions on selecting an alternative approach are not subject to dispute resolution. For example, if a technology chosen by the defendant fails to meet a performance standard, does the settlement allow for EPA to direct the additional work necessary to achieve the performance standard? This "back stop" approach provides an incentive for the defendant to properly select and implement a technology that will meet the performance standard.
7. Note that even if the possibility of, and criteria for, modification is specified in the decree, judicial approval (and potentially public comment) may still be necessary.

G. Third-Party Involvement

Incorporating the use of third parties in settlements has the potential to streamline EPA oversight of injunctive relief in settlements.¹⁴ Third parties often have expertise and/or competence to monitor, review and analyze complex injunctive relief, tasks or activities that place an inordinate demand on the Agency's resources. The Next Generation Compliance settlement workgroup is exploring the use of third parties to improve compliance, and plans to develop recommendations. In the meantime, consider whether there are some aspects of the settlement that are suitable for the use of third parties. For example:

1. Would it be appropriate to require the defendant to hire a third party to conduct audits at the defendant's facility(ies) or to evaluate an environmental management system on behalf of the company? (See Appendix G, example 1.) If an audit is required in the settlement, see EPA's general guidance on requiring audits in settlements.¹⁵
2. Would it be helpful to have a third party provide quality assurance/quality control (QA/QC) services regarding the defendant's monitoring/reporting obligations in settlements?¹⁶ For example, would EPA want a third party to review the defendant's monitoring data and objectively confirm that the data showed the facility was in compliance? (See Appendix G, examples 2 and 3.)

3. Are there other aspects of the settlement where utilizing third-party review could provide an efficient mechanism for EPA oversight? For example, in one Consent Decree, the court appointed a local “ombudsman” to oversee and mediate the residents’ concerns over the Water-In-Basement program. This mechanism reduced EPA’s resources needed for oversight of the settlement. (*See* Appendix G, example 1.)

If use of a third party is contemplated by the settlement, consider the following:

4. The settlement should include language clearly stating that the defendant remains liable for complying with the settlement, regardless of the involvement of the third party. (*See* Appendix G, example 3.)
5. Should the settlement establish specific qualifications that the third party must meet? Does EPA want to have the right to approve or disapprove a third party? (*See* Appendix G, example 2.)¹⁷
6. The settlement should be clear that the defendant, not EPA, hires and pays for the third party.

III. Conclusion

Case-specific factors affecting settlement are numerous and, ultimately, the terms of settlement for each case must be considered and determined on the case’s individual merits. The concepts included herein are based on experience and provide a general approach and factors to be considered in negotiating settlement terms that will reduce the oversight burden on case teams overseeing implementation of Agency settlements.

As such, this guidance is intended to be a dynamic instrument which will continue to reflect the Agency’s ongoing experience and evolving patterns and practices in negotiating settlements and drafting settlement language. To that end, the Office of Civil Enforcement will be developing a website for litigation teams to post settlement language and identify patterns and practices to further enhance the concepts in this guidance. If you have any questions, please call Peter W. Moore at 202-564-6014 or Ginny Phillips at 202-564-6139.

cc: Assistant Section Chiefs, Environmental Defense and Enforcement Sections, DOJ/ENRD

APPENDICES OF EXAMPLE SETTLEMENT LANGUAGE

Appendix A: Tracking Settlement Oversight

Example of Spreadsheet Tracking Settlement Requirements¹⁸

	CD Requirement	Due Date	Certification Required	Reporting Requirement
OTLs	Replace OTLs	completed		
	operate OTLs in compliance with all applicable requirements of 49 CFR Parts 195 and 199.	on-going		Y
Emergency Repair	place orders for emergency repair equipment	effective date + 90 days		Y
Emergency Repair	maintain emergency repair equipment and materials as specified in Appx B	duration of CD		Y

Appendix B: Injunctive Relief

Example of Performance Standards

1. *See* Pars. 60 through 65
<http://www.epa.gov/compliance/resources/decrees/civil/caa/nipsco-cd.pdf>

Example of Testing and Implementing Innovative Injunctive Relief

2. *See* Pars. 17 through 23 (testing innovative injunctive relief) and paragraphs 27 and 28 (implementing innovative injunctive relief)
<http://www.epa.gov/compliance/resources/decrees/civil/mm/invista-cd.pdf>

Example of Test and Set

3. *See* Consent Decree Appendix
<http://www.epa.gov/compliance/resources/decrees/civil/caa/lafarge-cd.pdf>

Appendix C: Milestones and Stipulated Penalties

Example of Critical Milestones

1. See Pars. 42 through 46 <http://www.epa.gov/enforcement/water/documents/decrees/gsp-cd.pdf>

Example of Increased Stipulated Penalties

2. See Par. 14 <http://www.epa.gov/enforcement/waste/documents/decrees/ineos-cd.pdf>

Appendix D: Review of Deliverables

Examples of Self-Certification Language

1. Within fifteen (15) days of the receipt of this Order, the Respondent shall provide written certification to the EPA Region X, that the activities required in the previous paragraph have been completed and shall include any supporting documents such as receipts and invoices.
2. Within thirty (30) days of the effective date of this Order, the Respondent shall certify compliance with permitted effluent limitations (pollutant X/limit X).

Example of Review and Comment Language

3. *See* Par. 77 <http://www.epa.gov/compliance/resources/decrees/civil/caa/murphyoil-cd.pdf>
4. *See* Par. 33.F.ii (p. 92) 6th amendment
<http://www.epa.gov/compliance/resources/decrees/amended/6thamendedbp-cd.pdf>

Example of Self-Implementation Language

5. *See* Par. 100 <http://www.epa.gov/compliance/resources/decrees/civil/caa/murphyoil-cd.pdf>

Appendix E: Monitoring, Reporting and Record-Keeping

Examples of Progress Report Language:

1. *See* Par. 199 <http://www.epa.gov/compliance/resources/decrees/civil/caa/sinclair-cd.pdf>
(except note that this example does not require them to report violations other than of emissions limits)
2. *See* Paragraph 40
<http://www.epa.gov/compliance/resources/decrees/civil/rcra/cfindustries-cd.pdf>

Example of Electronic Portal Language:

3. *See* Par. 36 <http://www.epa.gov/compliance/resources/decrees/civil/cwa/bpnorthslope-cd.pdf>

Example of Electronic Submission Language:

4. *See* <http://www.epa.gov/compliance/resources/decrees/amended/ergon-stipulatedorder-cd.pdf>

The following is a common approach to reporting:

1. Defendant shall submit the following reports:
 - a. Within 30 Days after the end of each calendar-year [*half (i.e., by July 30, and January 30)*] after lodging of this Consent Decree, until termination of this Decree pursuant to Section XVIII, Defendant shall submit [*specify required mode of submission*] a [*semi-annual*] report for the preceding [*half year*] that shall include [*insert relevant required information, such as the status of any construction or compliance measures; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; operation and maintenance; [and] reports to state agencies; [and][where a SEP is being performed, include: "a discussion of Defendant's progress in satisfying its obligations in connection with the [_____] SEP under Section [] of this Decree including, at a minimum, a narrative description of activities undertaken; status of any construction or compliance measures, including the completion of any milestones set forth in the SEP Work Plan, and a summary of costs incurred since the previous report. "]*]
 - b. [*The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation.*] **OR** [*If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States [and the State] of such violation and its likely duration, in writing, within ten working Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation.*] If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section [] of this Consent Decree (Force Majeure).
 - c. Whenever any violation of this Consent Decree [*or of any applicable permits*] or any other event affecting Defendant's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA [*and the State*] orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

Appendix F: Modification of Settlements

Examples of Settlement Modification Language:

- 1.a. *[Except as otherwise set forth in Paragraph []/Appendix [],]* 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.
- 1.b. Any disputes concerning modification of this Decree shall be resolved pursuant to Section [] of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph [], 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).
2. *See* Paragraph 90
<http://www.epa.gov/compliance/resources/decrees/civil/rcra/cfindustries-cd.pdf>

Example of Modification Language to Specify a Particular Appendix:

3. The terms and schedules contained in Appendix A of this Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects [*Defendant's*] ability to meet the requirements or objectives of this Decree.

Appendix G: Third Party Involvement

Example of Audit Language:

1. *See* Pars. 30 – 33 <http://www.epa.gov/compliance/resources/decrees/civil/cwa/patriot-cd.pdf>

Example of Third Party Settlement Oversight Language:

2. *See* Pars. 30 – 35
<http://www.epa.gov/compliance/resources/decrees/civil/cwa/bpnorthslope-cd.pdf>
3. *See* Par. 22
<http://www.epa.gov/enforcement/water/documents/decrees/transocean-cd.pdf>