



to move to dismiss Count I at the time of sentencing, and to recommend the disposition specified below, subject to the conditions in section VII.

### **TERMS OF THE AGREEMENT**

#### **I. MAXIMUM PUNISHMENT**

The defendant understands that the maximum statutory punishment for a corporate defendant that may be imposed for the Willful Violation of an Occupational Safety and Health Standard Causing Death to an Employee, in violation of Title 29, United States Code, Section 666(e), as charged in Count II, is:

- A. A fine of not more than \$500,000 (29 U.S.C. § 666(e); 18 U.S.C. § 3559(a)(7); 18 U.S.C. § 3571(c)(4));
- B. Probation of not more than five years (18 U.S.C. § 3561(c)(2));
- C. A special assessment of \$50 (18 U.S.C. § 3013(a)(1)(B)(ii)); and
- D. Restitution is authorized (18 U.S.C. § 3663(a)(3)).

#### **II. FACTUAL BASIS FOR PLEA**

The defendant admits the allegations charged in the Information and understands that the nature of the charges to which the plea is offered involves proof as to Count II. Specifically, the defendant admits, and the Government is prepared to prove, that at all times relevant to the Information, the following was true and correct:



a. Defendant ABC Polymer was a manufacturer of extruded plastic products and other goods, which operated a plant located at 545 Elm Street in Helena, Alabama 35080 (“ABC Facility”).

b. The Occupational Safety and Health Act (“OSH Act”) authorized the Occupational Safety and Health Administration (“OSHA”) to promulgate workplace safety and health standards and required employers to comply with these standards. 29 U.S.C. §§ 654(a), 655.

c. Pursuant to Title 29, United States Code, Section 655, OSHA had promulgated a safety and health standard covering machine guarding. 29 C.F.R. § 1910.212(a). The standard required that “[t]he point of operation of machines whose operation exposes an employee to injury, shall be guarded. The guarding device shall be in conformity with any appropriate standards therefor, or, in the absence of applicable specific standards, shall be so designed and constructed as to prevent the operator from having any part of his [or her] body in the danger zone during the operating cycle.” 29 C.F.R. § 1910.212(a)(3)(ii).

d. “Employer” was defined at Title 29, United States Code, Section 652(5). Defendant ABC Polymer was an “employer” under the OSH Act.

e. “Employee” was defined at Title 29, United States Code, Section 652(6). Catalina Estillado, a/k/a Catalina Estillado Miguel, a/k/a Eva Saenz



(“Catalina Estillado”), was defendant ABC Polymer’s “employee” under the OSH Act.

f. On or about April 25, 2017, ABC Polymer hired Catalina Estillado to work as a machine operator at the ABC Facility.

g. ABC Polymer operated multiple plastic extrusion “lines” at the ABC Facility, by which raw materials would be molded into a flat rectangular plastic sheet, which was then pulled through a series of rollers, before being cut into plastic “threads” or “tapes,” which were used in a product.

h. Clusters of metal rollers called “godets” arranged at different points within each line would pull the plastic sheet material through the line.

i. Line 3, Godet 1 at the ABC Facility consisted of three metal drums or rollers arranged in a triangular shape. The narrowest part of the spaces between these rollers was approximately 4.75 inches. The normal operational speed of Line 3 was approximately 70 to 90 linear feet of plastic sheet per minute.

j. Line 3, Godet 1 was equipped with a “cage” or barrier guard that could be pulled down over the front-entrance side of the roller drums along with emergency stops. However, there was no barrier guarding of any kind on the side of the roller drums.

k. ABC Polymer's written "General Safety Rules and Regulations," dated January 1, 2008, stated:

Machine guards are installed as a means of protecting you [the employees] from those parts of the equipment which could cause injury should you make contact while the equipment is in operation. For this reason, these guards must be left in place except when maintenance is being performed and then the guards may be removed only when the equipment controls are locked out by the person performing the maintenance.

l. Notwithstanding its written policy, ABC Polymer was aware that its employees routinely raised the guards on the front of the rollers to cut wraps and/or tangles off the rollers and then did not close the guards. In this way they often operated Line 3, Godet 1 with the guard in the "up" or unprotected position when the rollers were moving.

m. ABC Polymer also trained its employees to cut wraps and/or tangles off the rollers while in operation, bypassing guards if necessary.

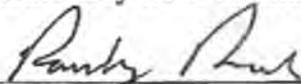
n. ABC Polymer knew, or should have known, that not having guards on the side of the rollers, operating the machine with the front guards in the up position, and allowing employees to cut wraps and/or tangles off of rollers while they were moving, bypassing guards if necessary, exposed employees to injuries, up to and including death, from interactions with the unguarded moving rollers.

o. On August 16, 2017, ABC Polymer assigned Catalina Estillado to work on Line 3. While working on Godet 1, Catalina Estillado became entangled in the roller drums on the unguarded side of the machine, which caused her death.

p. ABC Polymer willfully violated 29 C.F.R. § 1910.212(a)(1), a standard promulgated pursuant to 29 U.S.C. § 655, and that violation caused the death of Catalina Estillado, in violation of 29 U.S.C. § 666(e).

q. Since Catalina Estillado's death, ABC Polymer has taken numerous steps to prevent similar incidents in the future. These steps include installing new guards on the side of the roller drums, installing an enhanced guard on the front-entrance side of the roller drums, implementing policies prohibiting employees from accessing the roller drums while in operation, and engaging a third-party safety consultant.

**The defendant, through its duly authorized legal representative, hereby stipulates that the facts stated above are substantially correct and that the Court can use these facts in calculating the defendant's sentence. The defendant further acknowledges that these facts do not constitute all of the evidence of each and every act that the defendant may have committed.**

  
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**Randy Reed**  
Representative of Defendant ABC Polymer

### III. RECOMMENDED SENTENCE

Subject to the limitations in Section VII regarding subsequent conduct and pursuant to Fed. R. Crim. P. 11(c)(1)(B), the Government and the defendant have agreed to the following sentence, which they will jointly recommend to the Court at sentencing:

a. A fine of \$167,928 which takes into account the nature and circumstances of the offense, the civil fines and Workers' Compensation ABC Polymer has already paid, and the remedial efforts it has already taken; and

b. Restitution to the estate of the victim, Catalina Estillado, a/k/a Catalina Estillado Miguel, a/k/a Eva Saenz, in the amount of \$242,928, as calculated by the United States' expert, plus funeral expenses to the extent those funeral expenses have not already been paid by Workers' Compensation; and

c. A two-year term of probation, to include as a special condition:

i. Compliance with the attached Safety Compliance Plan.

*See Attachment A.*

d. That the defendant pay a special assessment of \$50, said amount due and owing as of the date sentence is pronounced.



#### **IV. WAIVERS**

##### **A. STATUTE OF LIMITATIONS WAIVER**

In consideration of the recommended disposition of this case, the defendant, ABC Polymer, hereby understands, acknowledges, and agrees that if this plea agreement is set aside for any reason, it will not assert any defense based on any applicable statute of limitations or the Speedy Trial Act, 18 U.S.C. § 3161, *et seq.*, that includes the passage of time from and including the date of this plea agreement until and including the date of entry of any order setting this plea agreement aside.

##### **B. RIGHT TO APPEAL AND POST-CONVICTION RELIEF**

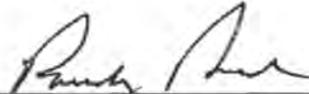
In consideration of the recommended disposition of this case, the defendant, ABC Polymer, hereby waives and gives up its right to appeal its conviction and/or sentence in this case, as well as any fines, restitution, and forfeiture orders, the Court might impose. Further, the defendant waives and gives up the right to challenge the conviction and/or sentence, any fines, restitution, forfeiture orders imposed or the manner in which its conviction and/or sentence, any fines, restitution, and forfeiture orders were determined in any post-conviction proceeding, including, but not limited to, a motion brought under 28 U.S.C. § 2255, and any argument that (1) the statute(s) to which the defendant is pleading guilty is or are unconstitutional or (2) the admitted conduct does not fall within the scope of the statute(s).

The defendant reserves the right to contest in an appeal or post-conviction proceeding(s) the following:

- a. Any sentence imposed in excess of the applicable statutory maximum sentence(s); and
- b. Ineffective assistance of counsel.

The defendant acknowledges that before giving up these rights, the defendant discussed the maximum punishments available under Count II with the defendant's attorney, who explained them to the defendant's satisfaction. The defendant further acknowledges and understands that the Government retains its right to appeal where authorized by statute.

The defendant's duly authorized legal representative hereby places his/her signature on the line directly below to signify that the defendant fully understands the foregoing paragraphs, and that the defendant is knowingly and voluntarily entering into this waiver.

  
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**Randy Reed**  
Representative of Defendant ABC Polymer

**V. UNITED STATES SENTENCING GUIDELINES**

Because the counts of conviction are Class B misdemeanors, *see* 29 U.S.C. § 666(e); 18 U.S.C. § 3559(a)(7), the Sentencing Guidelines do not apply. U.S.S.G. § 1B1.9. The Court is authorized to impose any sentence authorized by statute. *Id.* at Application Note 1.

**VI. AGREEMENT NOT BINDING ON COURT**

The defendant fully and completely understands and agrees that it is the Court's duty to impose sentence upon the defendant and that any sentence recommended by the Government is **NOT BINDING UPON THE COURT**, and that the Court is not required to accept the Government's recommendation. Further, the defendant understands that if the Court does not accept the Government's recommendation, the defendant does not have the right to withdraw the guilty plea.

**VII. VOIDING OF AGREEMENT**

The defendant understands that if the defendant (a) violates any federal, state, or local law or any condition of pretrial release after entering into this plea agreement, (b) moves the Court to accept a plea of guilty in accordance with, or pursuant to, the provisions of *North Carolina v. Alford*, 400 U.S. 25 (1970), (c) tenders a plea of *nolo contendere* to the charges, (d) violates any other term of this plea agreement, and/or (e) does or says anything that is inconsistent with the

acceptance of responsibility, the plea agreement will become NULL and VOID at the election of the United States, and the United States will not be bound by any of the terms, conditions, or recommendations, express or implied, which are contained herein. Further, such election will not entitle the defendant to withdraw a previously entered plea.

**VIII. OTHER DISTRICTS AND JURISDICTIONS**

The defendant understands and agrees that this agreement **DOES NOT BIND** any other United States Attorney in any other district, or any other state or local authority.

**IX. COLLECTION OF FINANCIAL OBLIGATION**

In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the defendant agrees to pay the agreed-upon fine and restitution in equal quarterly payments over the term of probation. Payments shall be applied first to defendant's restitution obligation. The defendant's first quarterly payment shall be paid no later than thirty days from the date of sentencing. No interest shall accrue on the defendant's financial obligations imposed in connection with this prosecution. If the defendant does not pay the agreed-upon fine and restitution as required by this Section IX, the defendant will, if requested by the Government:

- promptly submit a completed financial statement to the United States Attorney's Office, in a form that the Government provides and as the Government directs;
- ensure that its financial statement and any related financial disclosures will be complete, accurate, and truthful; and
- authorize the United States Attorney's Office to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

**X. TAX, FORFEITURE AND OTHER CIVIL/ADMINISTRATIVE PROCEEDINGS**

Unless otherwise specified herein, the defendant understands and acknowledges that this agreement does not apply to or in any way limit any pending or prospective proceedings related to the defendant's **tax liabilities**, if any, or to any pending or prospective **forfeiture** or other **civil** or **administrative** proceedings.

**XI. DEFENDANT'S ACKNOWLEDGEMENT**

I have read and understand the provisions of this plea agreement consisting of 15 pages. I have discussed the case and my constitutional and other rights with my lawyer. I am satisfied with my lawyer's representation in this case. I understand that by pleading guilty, I will be waiving and giving up my right to continue to plead not guilty, to a trial by jury as applicable, to the assistance of counsel at that trial, to

confront, cross-examine, or compel the attendance of witnesses, to present evidence on my behalf, to maintain my privilege against self-incrimination, and to the presumption of innocence. I agree to enter my plea as indicated above on the terms and conditions set forth herein.

**NO PROMISES OR REPRESENTATIONS OTHER THAN THOSE IN THE AGREEMENT HAVE BEEN MADE TO ME BY THE PROSECUTOR, OR BY ANYONE ELSE, NOR HAVE ANY THREATS BEEN MADE OR FORCE USED TO INDUCE ME TO PLEAD GUILTY.**

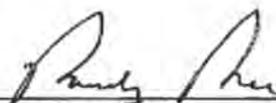
I further state that I have not had any drugs, medication, or alcohol within the past 48 hours except as stated here:

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I understand that this plea agreement will take effect and will be binding as to the Parties **only** after all necessary signatures have been affixed hereto.

I have personally and voluntarily placed my initials on every page of this plea agreement and have signed the signature line below to indicate that I have read, understand, and approve all of the provisions of this plea agreement, both individually and as a total binding agreement.

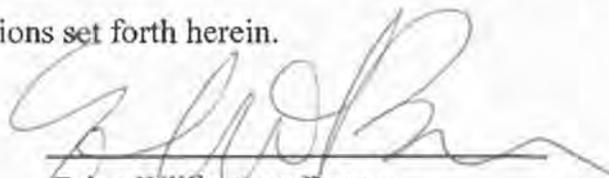
January 3, 2023  
DATE

  
\_\_\_\_\_  
Randy Reed  
Representative of Defendant ABC Polymer

**XII. COUNSEL'S ACKNOWLEDGMENT**

I have discussed this case with my client in detail and have advised my client of all of my client's rights and all possible defenses. My client has conveyed to me that my client understands this plea agreement and consents to all its terms. I believe the plea and disposition set forth herein are appropriate under the facts of this case and are in accord with my best judgment. I concur in the entry of the plea agreement on the terms and conditions set forth herein.

1/3/23  
DATE

  
Erica Williamson Barnes  
Defendant ABC Polymer's Counsel

**XIII. GOVERNMENT'S ACKNOWLEDGMENT**

I have reviewed this matter and this plea agreement and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

PRIM F. ESCALONA  
United States Attorney

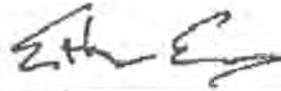
12/23/20

DATE



ROBERT O. POSEY  
RYAN S. RUMMAGE  
Assistant United States Attorneys

TODD KIM  
Assistant Attorney General



DATE

ETHAN EDDY  
WILLIAM SHAPIRO  
Trial Attorneys  
U.S. Department of Justice  
Envt. and Natural Resources Div.  
Environmental Crimes Section

**ATTACHMENT A**  
**Safety Compliance Plan****PURSUANT TO PLEA AGREEMENT****United States v. ABC Polymer Industries, LLC**

The following standards and requirements for a SAFETY COMPLIANCE PLAN (“SCP”) have been prepared pursuant to the Plea Agreement between ABC Polymer Industries, LLC (“ABC Polymer”) and the United States (“Government”) filed in the United States District Court for the Northern District of Alabama. Compliance with all of the standards and requirements of the SCP is an essential term of the Plea Agreement and will be imposed as a condition of probation.

This SCP includes various provisions to ensure that ABC Polymer’s extruded polypropylene products manufacturing facility located at 545 Elm Street, Helena, Alabama 35080 (“ABC Facility”) complies with all applicable requirements set forth by the Occupational Safety and Health Act (“OSH Act”) and regulations promulgated pursuant to the OSH Act.

Any plastic extrusion activity at the ABC Facility that is conducted during the period of probation will be in conformity with this SCP.

**A. DEFINITIONS**

- (1) “ABC Facility” means the extruded polypropylene products manufacturing facility located at 545 Elm Street, Helena, Alabama 35080.
- (2) “Employee” means a person who works at the ABC Facility, regardless of whether that person is a permanent employee, temporary employee, contractor, employed by ABC Polymer, and/or employed by a temporary agency or other third party, and includes supervisors, managers, and team leaders.
- (3) “Lockout” and “Tagout” (collectively “LOTO”) have the meaning set forth in 29 C.F.R. 1910.147(b).
- (4) “Servicing or Maintenance” means workplace activities such as constructing, installing, setting up, adjusting, inspecting, modifying, and maintaining and/or servicing machines or equipment. These activities include lubrication, cleaning or unjamming of machines or equipment and making adjustments or tool changes, where the employee may be exposed to the unexpected energization or startup of the equipment or release of hazardous energy.
- (5) In Paragraphs E. through G., below, “Machinery” means machines and/or equipment that, while operating, pose hazards such as those created by point of operation, ingoing nip points, rotating parts, and flying chips and sparks to the machine operator and other employees in the machine area, within the meaning of 29 C.F.R. § 1910.212(a)(1).
- (6) “Machine Guarding” means guarding on machinery that complies with the definition of

“Guard” in 29 C.F.R. § 1910.211(d)(32) and requirements in 29 C.F.R. § 1910.212.

## **B. APPLICABILITY/PURPOSE**

- (1) This SCP shall cover and apply to the ABC Facility on the date of sentencing and at any time during the period of probation.
- (2) The SCP is not intended to replace the regulations promulgated pursuant to the OSH Act, any Occupational Safety and Health Administration (“OSHA”) guidance, or any other United States or state statute or regulation. The purpose of this SCP is to augment the requirements of existing law by increasing and improving training, inspections, reviews, and audits of the ABC Facility; to require periodic reports to OSHA, the United States Probation Office for the Northern District of Alabama, the United States Attorney’s Office for the Northern District of Alabama, the Environmental Crimes Section of the United States Department of Justice (collectively hereinafter “the United States”); and to ensure that ABC Polymer is following the requirements of this SCP and all applicable OSH Act regulations and requirements.

## **C. SAFETY COMPLIANCE MANAGER**

- (1) Within 30 days of sentencing, ABC Polymer shall designate a senior manager or corporate officer as Safety Compliance Manager (hereinafter “SCM”) and ABC Polymer shall provide the name of the SCM to the United States. The SCM shall be responsible for coordinating with the Third Party Auditor (hereinafter “TPA”), as more fully described below; developing and implementing all of the procedures and systems required herein; establishing and implementing training programs; ensuring that inspections, reviews, and audits are carried out as required; and ensuring that all documents are properly maintained and that reports are made on a timely basis. All reports required under this SCP shall be prepared and/or reviewed by the SCM and signed under the penalty of perjury.
- (2) The SCM position will be filled by an individual with direct access to company management and direct oversight over manufacturing operations, who is familiar with the requirements of this SCP, and is knowledgeable about applicable OSH Act regulations and requirements. The SCM shall show at the time of appointment that he/she has been trained specifically in Machine Guarding, or will be trained within 30 days.
- (3) Within 60 days of sentencing, ABC Polymer shall ensure that all Employees have received a copy of this SCP, in a language that they can read and understand, and that this SCP is posted in a prominent place in the ABC Facility. All Employees hired after this date shall be provided with a copy of the SCP, in a language that they can read and understand, as part of their orientation.
- (4) Within 60 days of sentencing, ABC Polymer shall establish a policy that requires all Employees to cooperate fully with the SCM, the TPA, and the United States in carrying out the reviewing, auditing and oversight functions required by applicable law and this SCP, and that makes failure to do so grounds for dismissal.

- (5) The SCM shall be authorized to access all records and personnel for the purpose of ensuring compliance with this SCP. The SCM shall be authorized to implement all requirements of this SCP, and shall ensure that audits are carried out as required, that all documents are properly maintained and that reports are made on a timely basis to the TPA, and made available upon request by the United States.
- (6) If the SCM believes ABC Polymer is not supporting the SCM's efforts to implement this SCP, or is failing to comply with or enforce any applicable OSH Act regulation or requirement – *not limited to those regulations or requirements related to machine guarding* – the SCM shall inform the TPA within a reasonable time after notifying ABC Polymer of the purported deficiency.
- (7) ABC Polymer agrees not to retaliate against the SCM for carrying out his/her duties to implement this SCP.

#### **D. THIRD PARTY AUDITOR**

- (1) The TPA is Johnston and Associates, Inc. ("J&A"), located at 830 Crescent Center Drive #220 in Franklin, Tennessee 37067. ABC Polymer has been working with J&A since December 2020. J&A has performed 10 site inspections at the Facility since December 2020. During site inspections J&A reviews existing policies and procedures and offers suggestions for improvement, participates in employee observations, leads mock OSHA inspections and walk throughs, and leads training sessions. ABC Polymer is currently under contract with J&A until the end of 2023. ABC Polymer will extend its contractual relationship with J&A through the probation period. ABC Polymer's work to date may serve to comply with some of the obligations in the SCP.
- (2) *Substitution of TPA.* If at any time during the period of probation, ABC Polymer seeks to substitute a new TPA, ABC Polymer shall submit to the Government a list of three qualified candidates for the TPA position along with its recommendation for approval of one of the candidates, from which the Government, in consultation with OSHA will select a candidate to serve as the substitute TPA. In the event that none of the substitute candidates is found acceptable, or if the work of the TPA is unsatisfactory at any time, the Government may require that ABC Polymer supply additional candidates and/or that additional candidates be recommended by OSHA. The Government reserves the right to reject any proposed substitute TPA.

*Qualifications.* Qualified candidates for any substitute TPA include individuals or firms that have staff capable of applying the most current International Standards Organization ("ISO") 45001 (Occupational Health and Safety) and 19011 (Guidelines for Auditing Management Systems) and have the following experience, expertise, and capabilities:

- (a) expertise and competence in the regulatory programs under the OSH Act;
- (b) experience in performing safety audits in industrial or manufacturing environments;
- (c) sufficient expertise and competence to assess whether ABC Polymer has adequate policies, procedures, and equipment in place to ensure compliance with this SCP and to ensure regulatory compliance, correct non-compliance, and prevent future non-

- compliance; and
- (d) an individual who has experience performing safety audits in a plastic sheet manufacturing environment, and/or a Certified Safety Professional is preferred.
- (3) *Contractual Independence.* During the term of probation, the TPA shall not directly own any stock in ABC Polymer; must have no other ongoing contractual or business relationship, other than that of the TPA, with ABC Polymer; and may not seek or serve in other capacities with ABC Polymer, unless first disclosed to the Government, and the Court, and unless expressly approved by the Government. The TPA must exercise independent judgment and ensure that the objectives set forth in this SCP are met. ABC Polymer and the TPA shall notify the Government if any contractual relationships or proposed contractual relationships between ABC Polymer and the TPA arise during the term of probation.
  - (4) *Functional Independence.* The TPA shall function independently of ABC Polymer, but may communicate with ABC Polymer about the substance of its work. The TPA may consult with, but shall not receive or request approval in any form from any Employee of ABC Polymer regarding the development, clearance, or evaluation of any document, report, or communication of any kind, whether draft or final, required by this SCP.
  - (5) All work performed by the TPA and its auditors must be certified as being accurate and truthful. The certification shall be made with the understanding that any false information knowingly submitted is subject to prosecution under 18 U.S.C. §1001.

#### **E. MACHINE GUARDING POLICIES**

- (1) Within 90 days of sentencing, every piece of Machinery in which guarding is removable, shall be equipped with signs, posted at its entry point(s) and/or operator's station, warning of the hazards of operating the Machinery without Machine Guarding in both English, Spanish, and any other language necessary to ensure that Employees are able to read and understand the signage.
- (2) Since the time of the charged conduct, ABC Polymer has fabricated and installed custom Plexiglas guards on Line 3 at the front of the Godet roll stands and hard metal guarding on the sides of the Godet roll stands on the extrusion lines to prevent employee exposure to rollers while in operation. ABC Polymer will, at a minimum, maintain the current level of Machine Guarding on every piece of Machinery throughout the probation period and will install any Machine Guarding recommended by the TPA or otherwise identified by ABC Polymer as required by OSHA standards.
- (3) Since the time of the underlying conduct, ABC Polymer has implemented new written LOTO policies and procedures. Additionally, as confirmed by OSHA during its February 2020 inspection, ABC Polymer no longer allows employees to hand cut plastic wraps from the line with scissors or a utility knife while its extrusion lines are in operation, and ABC has implemented a slower threading speed for line startup. ABC Polymer will maintain these existing policies, and within 60 days of sentencing, the SCM shall review, and if necessary, update, all of ABC Polymer's policies regarding Machine Guarding to ensure that:

- (a) ABC Polymer has guards on all machines in operation within the ABC Facility, as required by 29 C.F.R. §§ 1910.212(a)(1) and 1910.212(a)(3)(ii).
  - (b) ABC Polymer has a written Work Rule against working on or operating unguarded Machinery without complying with LOTO procedures, as required by OSHA standards related to LOTO procedures, including 29 C.F.R. § 1910.147;
  - (c) ABC Polymer has a written Work Rule against removing or disabling Machine Guarding from Machinery without complying with LOTO procedures, as required by OSHA standards related to LOTO procedures, including 29 C.F.R. § 1910.147;
  - (d) Supervisors', managers', and team leaders' responsibilities for ensuring enforcement of the Work Rules are clearly established; and
  - (e) Disciplinary measures are set forth for any Employee who fails to follow the Work Rules, and for any supervisor, manager, or team leader who fails to fulfill his/her responsibilities for ensuring enforcement of and compliance with the Work Rules; the disciplinary measure for an Employee's second failure to follow the Work Rules, or for a supervisor, manager, or team leader's second failure to fulfill his/her responsibilities for ensuring enforcement of and compliance with the Work Rules, shall be termination.
- (4) Within 60 days of sentencing, the SCM shall submit documentation of all Machine Guarding at ABC's Facility and all of ABC Polymer's policies related to Machine Guarding, including the Work Rules and disciplinary procedures, to the TPA, if ABC Polymer or the SCM have not already done so. If the TPA determines that ABC Polymer's Machine Guarding and/or its policies fail to comply with the requirements of this section or with applicable OSH Act regulations and requirements, within 30 days of the TPA's determination, the SCM shall make the necessary additions and/or revisions and resubmit the revised policies and procedures to the TPA.

#### **F. MACHINE GUARDING TRAINING**

- (1) As noted by OSHA in February 2020, all ABC Polymer employees have been trained that guarding must be in place when machines are operating. Within 90 days of the finalization of the Machine Guarding policies in accordance with Section E.4, above, the SCM shall ensure that all Employees have been provided with copies of and trained on all of ABC Polymer's Machine Guarding policies. The training must be provided in English, Spanish, and any other language necessary to ensure that all Employees are trained, and must include a review of ABC Polymer policies, including those related to Machine Guarding.
- (2) Within 90 days of the finalization of the Machine Guarding policies in accordance with Section E.4, above, the SCM shall ensure that all managers, supervisors, and team leaders are trained on the roles and responsibilities they have for ensuring enforcement of and compliance with ABC Polymer's Machine Guarding policies.

- (3) For all individuals hired after the training described in Paragraph 1 of this Section has taken place, the SCM shall ensure that no new Employee begins operating, assisting any machine operator, or using any Machinery until undergoing all training described in Paragraph 1 of this Section, and/or any training otherwise required by OSHA regulations.
- (4) For all individuals who become managers, supervisors, and team leaders after the training described in Paragraph 2 of this Section has taken place, the SCM shall ensure that the new managers, supervisors, and team leaders do not begin their supervisory or managerial duties until undergoing the training described in Paragraph 2 of this Section, and/or any training otherwise required by OSHA regulations.
- (5) The SCM shall maintain detailed records of all training carried out pursuant to this section; shall provide such records to the TPA on a quarterly basis; and shall make such records available to the United States upon request.

#### **G. MACHINE GUARDING COMPLIANCE INSPECTIONS AND REPORTS**

- (1) Starting no later than 90 days after sentencing, at least once per shift per month, the SCM shall perform Machine Guarding Compliance Inspections in the areas of the ABC Facility where Machinery is located to ensure compliance with OSH Act requirements and ABC Polymer's Machine Guarding requirements and policies, set forth in Section E., above. The SCM shall document all violations of ABC Polymer's Machine Guarding policies, including but not limited to:
  - (a) Any Employees violating a Machine Guarding Work Rule set forth in Paragraphs E.2.b. and E.2.c;
  - (b) Any manger, supervisor, or team leader who observes a violation of a Machine Guarding Work Rule without taking action to stop the violation and discipline the Employee(s) in accordance with Paragraph E.2.e.
- (2) Managers, supervisors, and team leaders will continue to perform 10 Safety Observations per week to (1) reinforce correct safety behavior and (2) provide feedback on how to do a task in a safer manner. Managers, supervisors, and team leaders will document all violations of ABC Polymer's Machine Guarding policies observed during Safety Observations.
- (3) By no later than 15 days after the end of a calendar month, the SCM shall prepare a Machine Guarding Compliance Report describing all violations of ABC Polymer's Machine Guarding policies documented during that calendar month – whether they were discovered during Machine Guarding Compliance Inspections, Safety Observations, or by other means – including a description of the disciplinary action taken in response to those violations. If, in carrying out the Machine Guarding Compliance Inspections or Safety Observations described in this section, the SCM or his/her designee identifies violations of OSHA regulations or requirements *unrelated to Machine Guarding* that the SCM believes are not being addressed by ABC Polymer, the SCM shall include in the Machine Guarding Compliance Report a section describing “Other Non-Machine Guarding

Violations.” The SCM shall maintain all Machine Guarding Compliance Reports, transmit them to the TPA on a quarterly basis, and transmit them to the United States upon request.

- (4) The SCM may delegate the performance of Machine Guarding Compliance Inspections, and/or the preparation of the Machine Guarding Compliance Report to another individual, upon approval by the TPA. However, all Machine Guarding Compliance Reports must be signed by the SCM.
- (5) At any time and without prior notice to ABC Polymer, the TPA can conduct Machine Guarding Compliance Inspections. By no later than 60 days after the date of sentencing, and on at least a biannual basis thereafter, the TPA shall conduct a Machine Guarding Compliance Inspection without prior notice to ABC Polymer.

#### **H. MECHANISM FOR EMPLOYEES TO REPORT SAFETY CONCERNS**

- (1) Within 60 days of the entry of the plea agreement, the SCM shall establish, publicize to all Employees, and post in a conspicuous place in the Facility a mechanism by which Employees may report (anonymously if the Employee so desires) any concerns that this SCP is not being followed. Employees hired after this date shall be provided with information about this mechanism as part of their orientation.
- (2) The SCM shall review, investigate, and document in a timely fashion reports of safety concerns received from Employees and shall initiate, monitor, and document all actions taken as a result of such reports.
- (3) The SCM shall maintain records of Employee reports and the actions taken as a result of such reports, shall provide these records to the TPA on a quarterly basis, and shall make these reports available to the United States upon request.

#### **I. TPA Audit Reports**

- (1) No later than 180 days after the date of sentencing, the TPA shall prepare and submit to the United States an Audit Report that addresses ABC Polymer’s compliance with this SCP, including but not limited to the following:
  - (a) Whether the machine guarding in ABC’s Facility and ABC Polymer’s machine guarding policies comply with all applicable OSH Act regulations and requirements and Section E of this SCP;
  - (b) Whether ABC Polymer is carrying out machine guarding training in compliance with all applicable OSHA Act regulations and requirements of Section F of this SCP;
  - (c) Whether ABC Polymer is carrying out Machine Guarding Compliance Inspections and Safety Observations, and completing Machine Guarding Compliance Reports in compliance with all applicable OSH Act regulations and requirements and Section G of this SCP;
  - (d) Any significant findings from Machine Guarding Compliance Reports submitted

pursuant to Section G of this SCP;

- (e) Whether Employees who have been found in violation of Machine Guarding policies have been disciplined in accordance with the measures established pursuant to Paragraph E.2.e of this SCP;
  - (f) Any significant findings from any Machine Guarding Compliance Inspections carried out by the TPA in accordance with Paragraph G.4 of this SCP;
  - (g) Any Employee reports of safety concerns that the TPA does not believe have been adequately addressed in accordance with Paragraph H.2. of this SCP; and
  - (h) Any violation of any OSH Act regulation or requirement observed by the TPA, or brought to the TPA's attention by the SCM or through a report of an Employee concern, that has not been remedied by ABC Polymer.
- (2) At any time during the term of the probation, the United States may request an additional Audit Report from the TPA if the United States deems this necessary.
  - (3) The TPA shall provide ABC Polymer with a copy of all Audit Reports.

#### **J. ENHANCED OSHA OVERSIGHT**

- (1) If, based on any information provided to the United States in Audit Reports, the United States determines there are reasonable grounds to believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, at the ABC Facility:
  - (a) ABC Polymer shall allow OSHA personnel to inspect the ABC Facility without a warrant and without advance notice, and OSHA may issue citations or take other lawful enforcement actions during such inspections;
  - (b) OSHA will have access to and the right to require production of documents in the possession or control of ABC Polymer, subject to limitations of privilege, which OSHA reasonably requires to determine ABC Polymer's compliance with the OSH Act; and
  - (c) OSHA will have the authority to interview any agent or employee of ABC Polymer concerning any matter related to compliance with the OSH Act, subject to limitations of privilege. If requested by the agent or employee, the interview shall be private.