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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

VALERO ENERGY CORPORATION,
VALERO REFINING – NEW ORLEANS, L.L.C.,
THE PREMCOR REFINING GROUP, INC.,
VALERO REFINING – TEXAS, L.P.
DIAMOND SHAMROCK REFINING, L.P.
VALERO REFINING COMPANY –
TENNESSEE, L.L.C.,
VALERO MARKETING AND SUPPLY COMPANY,
HAMMOND MAINLINE PIPELINE COMPANY
L.L.C., AND
ULTRAMAR, INC.,

Civil Action No. 5:20-cv-01237

Defendants.

NOTICE OF LODGING OF CONSENT DECREE

Plaintiff, the United States of America hereby gives notice of the lodging of a proposed Consent Decree (“Decree”), attached hereto, that if entered by the Court will resolve the claims asserted in its Complaint against Defendants, Valero Energy Corporation, Valero Refining – New Orleans, L.L.C., The Premcor Refining Group, Inc., Valero Refining – Texas, L.P., Diamond Shamrock Refining, L.P., Valero Refining Company – Tennessee, L.L.C., Valero Marketing and Supply Company, Hammond Mainline Pipeline Company L.L.C., and Ultramar, Inc. (collectively hereafter, “Valero”). In its Complaint, the United States alleges Valero violated of Section 211 of the Clean Air Act (“CAA”) and its implementing regulations at 40 C.F.R. Part 80, arising from the production and importation of gasoline and diesel fuel that did not meet certain fuel standards or programmatic requirements. The alleged violations occurred at 11 refineries located in Louisiana, Texas, Tennessee, New Jersey, Arkansas, and Indiana and one import facility located in New York.

The proposed Consent Decree which resolves all violations alleged in the Complaint and recovers a civil penalty of \$2,850,000. Injunctive relief secured by the proposed Consent Decree requires development and implementation of a company-wide Fuels Management System to facilitate Valero’s production of gasoline and diesel fuel in accordance with the CAA and the Fuels Regulations. The proposed Consent Decree also includes mitigation projects estimated to reduce volatile organic compound emissions from certain Valero facilities by 22.72 tons per year.

In accordance with the policy of the United States Department of Justice and as provided in 28 C.F.R. § 50.7, notice of the lodging of the proposed Decree will be published in the Federal

Register. Publication in the Federal Register will commence a thirty (30) day public comment period. Plaintiff may withdraw or withhold its consent to the proposed Decree if the public comments disclose facts or considerations which indicate that the proposed Decree is not fair, reasonable, adequate, and consistent with the goals of the Clean Air Act. After the conclusion of the thirty day comment period, Plaintiff will either notify the Court of its withdrawal of the proposed Decree or move this Court to sign and enter the proposed Decree. Until Plaintiff so notifies the Court, it respectfully requests that the Court take no action concerning the Complaint and the proposed Decree that is lodged herewith.

Dated: October 19, 2020.

Respectfully Submitted,

FOR THE UNITED STATES OF AMERICA

BRUCE GELBER

Deputy Assistant Attorney General

Environment & Natural Resources Division

United States Department of Justice



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Notice of Lodging of Consent Decree
United States v. Valero Energy Corp., et al.

Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2020, the foregoing was filed electronically and is available for viewing and downloading from the ECF system. I further certify that a copy was mailed by U.S. Postal Service first class mail to the following party:

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John N. Moscato

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

VALERO ENERGY CORPORATION

Defendant.

Civil Action No. 5:20-cv-01237

CONSENT DECREE

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I. INTRODUCTION

WHEREAS, the United States of America (“United States” or “Plaintiff”), on behalf of the United States Environmental Protection Agency (“the EPA”), has filed a Complaint for civil penalties and other relief against Valero Energy Corporation (EPA Company ID Registration Number 4006), Valero Refining – New Orleans, LLC, The Premcor Refining Group, Inc., Valero Refining – Texas, L.P., Diamond Shamrock Refining, L.P., Valero Refining Company – Tennessee, L.L.C., Valero Marketing and Supply Company, Hammond Mainline Pipeline Company LLC, and Ultramar, Inc. (collectively, “Valero”) under Clean Air Act (“CAA” or “Act”), Sections 205(b) and 211(d), as amended, 42 U.S.C. §§ 7524(b) and 7545(d), for alleged violations of certain regulations prescribed under CAA Section 211(c), (h), and (k), 42 U.S.C. § 7545(c), (h), and (k), and published at 40 C.F.R. Part 80.

WHEREAS, in October and November of 2015, the EPA conducted an audit of Valero’s compliance with Section 211 of the CAA, 42 U.S.C. § 7545, and 40 C.F.R. Part 80 and informed Valero about areas of concern relating to Valero’s compliance;

WHEREAS, soon after the EPA’s audit Valero began to develop and pilot a company-wide Fuels Management System;

WHEREAS, Valero self-reported potential violations to the EPA involving the production of one batch of reformulated gasoline on or around August 1, 2018 and three truck shipments of conventional gasoline on or around September 1, 5, and 8, 2017 that exceeded the applicable volatility standards;

WHEREAS, Valero committed to completing two benzene reduction measures at the East Plant of its Corpus Christi East Refinery, located at 1147 Cantwell Lane, Corpus Christi, Texas, by December 31, 2021. The first benzene reduction measure involves diverting residual material

from the sump at the fuels laboratory to the refinery's sewer where the residual material is treated by an API separator and then routed through a covered conveyance system to an equalization tank with a carbon adsorption system and then to the refinery's wastewater treatment plant. The second benzene reduction measure involves the installation of a carbon adsorption system on the Benzene Stripper Unit Feed Tank. Valero has completed the first benzene reduction measure and has begun work on the second benzene reduction measure. Valero will provide notice to EPA of the completion of the Tank benzene reduction measure on or before December 31, 2021. Valero estimates these measures will cost approximately \$1,775,000 to complete and anticipates that they will collectively reduce benzene emissions by at least 583 pounds each year.

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

WHEREAS, the United States and Valero (together, 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, will avoid litigation among the Parties, and is fair, reasonable, and in the public interest; and

WHEREAS, without a trial regarding any issue of fact or law, the Parties agree to entry of this Consent Decree.

NOW, THEREFORE, before the taking of any testimony and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and CAA Sections, 205(b) and 211(d), 42 U.S.C. §§ 7524(b) and 7545(d), and personal jurisdiction over the Parties. Venue lies in this District pursuant to 28 U.S.C.

§§ 1391(b) and (c), 1395(a), and Section 205(b) of the Act, 42 U.S.C. § 7524(b), because Valero's principal place of business is located in this judicial district. Solely for purposes of this Decree, or any action to enforce this Decree, Valero consents to the Court's jurisdiction over this Decree and any such action to enforce this Decree, and to venue in this judicial district.

2. Solely for purposes of this Consent Decree, Valero agrees that the Complaint states claims upon which relief may be granted pursuant to CAA Section 211(c), (d), (h), and (k), 42 U.S.C. § 7545(c), (d), (h), and (k), and the regulations published at 40 C.F.R. Part 80.

3. Valero waives service of the Complaint and summons in this matter pursuant to Fed. R. Civ. P. 4(d). Without admitting or denying the factual allegations contained in the Complaint, Valero consents to the terms of this Decree.

III. DEFINITIONS

4. Terms used in this Consent Decree that are defined in the CAA or in regulations promulgated pursuant to the CAA shall have the meanings assigned to them in the CAA 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. "**CAA**" means the Clean Air Act, 42 U.S.C. § 7401 et seq.;
- b. "**Complaint**" shall mean the Complaint filed by the United States in this action;
- c. "**Consent Decree**" or "**Decree**" shall mean this consent decree, including all Appendices listed in Section XXIV and attached hereto;
- d. "**Date of Lodging**" means the day on which this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Western District of Texas before solicitation of public comment as described in Paragraph 82 of Section XX (Public Participation);

- e. “**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;
- f. “**Effective Date**” shall mean the effective date of this Consent Decree as defined in Section XVI (Effective Date);
- g. “**Force Majeure**” shall have the meaning set forth in Paragraph 42 of this Decree;
- h. “**Fuels Regulations**” shall mean the regulations promulgated by the EPA at 40 C.F.R. Part 80, Subparts A-J, L, N-O;
- i. “**Interest**” means interest at the rate specified for debts owed to departments or agencies of the United States pursuant to 28 U.S.C. § 1961;
- j. “**Paragraph**” shall mean a portion of this Decree identified by an Arabic numeral;
- k. “**Parties**” shall mean the United States and Valero;
- l. “**Section**” shall mean a portion of this Decree identified by a Roman numeral;
- m. “**Valero**” shall mean, collectively, Valero Refining – New Orleans, LLC, The Premcor Refining Group, Inc., Valero Refining – Texas, L.P., Diamond Shamrock Refining, L.P., Valero Refining Company – Tennessee, L.L.C., Valero Marketing and Supply Company, Hammond Mainline Pipeline Company LLC, and Ultramar, Inc.;
- n. “**Valero Refineries**” shall mean the refineries owned or operated by Valero located in Ardmore, Oklahoma (the “Ardmore Refinery”), Benicia, California (the “Benicia Refinery”), Corpus Christi, Texas (the “Corpus Christi East Refinery” and the “Corpus Christi West Refinery”), Houston, Texas (the “Houston Refinery”),

Sunray, Texas (the “McKee Refinery”), Memphis, Tennessee (the “Memphis Refinery”), Chalmette, Louisiana (the “Meraux Refinery”), Port Arthur, Texas (the “Port Arthur Refinery”), Norco, Louisiana (the “St. Charles Refinery”), Texas City, Texas (the “Texas City Refinery”), Three Rivers, Texas (the “Three Rivers Refinery”), Wilmington, California (the “Wilmington Refinery”), West Memphis, Arkansas (the “West Memphis Terminal”), and Pasadena, Texas (the “Pasadena Terminal”), to the extent that Valero conducts blending activities at the Pasadena Terminal pursuant to a refiner registration; and

- o. “**Valero Fuels Management System**” or “**FMS**” means the plan developed by Valero to facilitate its compliance with the Fuels Regulations. An outline of the requirements that shall be addressed by the FMS is attached to this Consent Decree as Appendix A.

IV. APPLICABILITY

5. The obligations of this Consent Decree apply to and are binding upon the United States and upon Valero and any successors, agents, and assigns; provided, however, that with respect to any obligation applicable to an individual Valero Refinery pursuant to Section VII (Tank VOC Emissions Mitigation Action) such obligations shall only apply to the specific Valero corporate entity that owns such Valero Refinery.

6. Except as provided in Section X (Force Majeure), Valero shall ensure that the performance of its obligations in this Decree are undertaken in accordance with the requirements contained in this Decree. Valero shall provide a copy of all applicable portions of this Decree (or a link to the information on the internet) to all officers and employees whose duties include compliance with any provision of this Decree. No later than the execution of any contract with a consulting or

contracting firm that is retained to perform work required by this Decree, Valero shall provide a copy of the applicable provisions of this Decree (or link to the information on the internet) to each such consulting or contracting firm. Valero shall condition any such contract upon performance of the work in conformity with the applicable terms of this Decree. No later than thirty (30) Days after the Date of Lodging of the Decree, Valero also shall provide a copy of the applicable provisions of this Decree to each consulting or contracting firm already retained by Valero that performs any work required by this Decree and Appendices A and B. Copies of the applicable provisions of the Decree do not need to be supplied to firms who are retained to supply materials or equipment to satisfy requirements of this Decree. Nor do copies of the applicable provisions pertaining to the Valero Fuels Management System need to be provided to Valero officers or employees, or their contractors, unless those individuals are responsible for the development or implementation of the Fuels Management System.

7. In any action to enforce this Decree, Valero shall not assert as a defense the failure by any of its officers, members, employees, agents, or contractors, to take any actions necessary to comply with the terms of this Decree, unless Valero establishes that such failure resulted from a Force Majeure event as that term is defined in Section X of this Decree.

8. Valero shall give written notice of, and shall provide a copy of, the Decree to any transferee(s) or successor(s) in interest (hereafter, collectively “transferee(s)”) of the El Vista Terminal located near Valero’s Port Arthur Refinery where mitigation is to be implemented under this Decree at least thirty (30) Days prior to the transfer of interest, ownership, or operation of any portion of that facility. Valero shall notify the United States in accordance with the notice provisions in Section XV (Notices) of any proposed transfer at least thirty (30) Days prior to any such transfer.

9. If Valero intends to request that the United States agree to a transferee's assumption of any of Valero's obligations at the El Vista Terminal where mitigation is to be implemented under this Decree, Valero shall condition any transfer, in whole or in part, of ownership of, operation of, or other interest in these facilities upon the transferee's written agreement to execute a modification to this Decree that shall make the terms and conditions of the Decree applicable to the transferee.

10. As soon as possible prior to the transfer of the El Vista Terminal where mitigation is to be implemented under this Decree: (i) Valero shall notify the United States of the proposed transfer and of the specific obligations in the Decree that Valero proposes the transferee assume for a transferred facility; (ii) Valero shall certify that the transferee is contractually bound by Valero to assume Valero's obligations and liabilities under this Decree; and (iii) Valero shall include in any contract with a transferee the obligation that the transferee submit to the United States a certification that the transferee has the financial and technical ability to assume Valero's obligations and liabilities under this Decree and a certification that the transferee is contractually bound by Valero to assume Valero's obligations and liabilities under this Decree. Should Valero or the transferee fail to comply with any provisions of this Paragraph, Valero shall remain responsible for the performance of all obligations and liabilities under this Decree.

11. After submission to the United States of the notice and certifications, either: (i) the United States shall notify Valero that the United States does not agree to modify the Decree to make the transferee responsible for complying with the terms and conditions of the Decree; or (ii) the United States, Valero, and the transferee shall file with the Court a joint motion requesting the Court approve a modification substituting the transferee as a defendant responsible for complying with the terms and conditions of the Decree.

12. If Valero does not secure the agreement of the United States to a joint motion within a reasonable period of time, then Valero and the transferee may file, without the agreement of the United States, a motion requesting the Court to approve a modification substituting the transferee for Valero and requiring the transferee to implement the mitigation required by this Decree at the transferred facility in compliance with the applicable terms and conditions of the Decree. The United States may file an opposition to the motion. The motion to modify shall be granted unless Valero and the transferee: (i) fail to show that the transferee has the financial and technical ability to assume the obligations and liabilities of the Decree; (ii) fail to show that the modification language effectively transfers the obligations and liabilities to the transferee; or (iii) the Court finds other good cause for denying the motion.

V. CIVIL PENALTY

13. By no later than 30 Days after the Effective Date of this Decree, Valero shall pay to the United States the total sum of \$2,850,000 as a civil penalty.

14. Valero shall pay the civil penalty by FedWire Electronics Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Valero, following the Effective Date, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Western District of Texas, 601 NW Loop 410, Suite 600, San Antonio, Texas 78216, phone (210) 384-7276. At the time of payment, Valero shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter stating that the payment is for the civil penalty owed pursuant to the Decree in United States v. Valero Energy Corporation, and referencing the civil action number and DOJ case number 90-5-2-1-11769, to the United States in accordance with Section XV of this Decree (Notices). Valero shall transmit these materials by email to acctsreceivable.cinwd@epa.gov; and by U.S. Postal Service mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

15. If any portion of the total civil penalty due to the United States is not paid within the time specified in Paragraph 13, above, Valero shall together pay Interest on the amount past due, accruing from the date payment was due. Interest payment under this Paragraph shall be at the rate specified in 28 U.S.C. § 1961 and in addition to any stipulated penalty due.

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

VI. FUELS MANAGEMENT SYSTEM

17. In order to support Valero's production of conventional and reformulated gasoline and motor vehicle, nonroad, locomotive, and marine ("MVNRLM") diesel fuel in accordance with applicable requirements of Section 211 of the CAA, 42 U.S.C. § 7545, and the Fuels Regulations, Valero shall develop and implement a Fuels Management System in accordance with the requirements in Appendix A at all of the Valero Refineries, as defined herein, in accordance with the schedules set forth in that Appendix.

18. Beginning one hundred eighty (180) Days after the Effective Date and continuing until the FMS is completed in accordance with Appendix A, Valero shall provide the United States with an annual progress report. Each progress report shall contain:

- a. A list of all Valero Refineries that have been granted a variance to any corporate procedures and protocols, and a description of the variance, since the submission of the last progress report;
- b. A summary of the status of training efforts for employees and contractors at the Valero Refineries;

- c. A summary of the status of the implementation of laboratory measurement system statistical quality control management software at laboratories operated by Valero at the Valero Refineries to analyze fuel for compliance with the Fuels Regulations;
- d. A list of the Valero Refineries audited since the last status report, including (i) the date the audit occurred, (ii) whether the audit identified any areas in need of corrective action, and (iii) if corrective action was needed, the date the corrective action was, or is anticipated to be, completed;
- e. The status (i.e., ongoing or completed) of any corrective actions not resolved during previous progress report periods; and
- f. A description of all material modifications Valero made to the FMS since the submission of the last progress report.

VII. TANK VOC EMISSIONS MITIGATION ACTION

19. In accordance with the requirements and schedules contained in Appendix B (Tank VOC Emissions Mitigation Action), Valero shall install geodesic domes on three (3) selected tanks at the El Vista Terminal located near its Port Arthur Refinery (the “Mitigation Action”). The particular tanks on which geodesic domes shall be installed and the completion deadlines for installation are identified in Appendix B. Valero estimates that, following the installation of the geodesic domes, volatile organic compounds (“VOCs”) emissions will be reduced by approximately 23 tons each year, as determined by the TankESP version 3.0.14 program, based on the projected maximum emissions from these tanks. Valero shall use good faith efforts to secure these estimated emissions reductions through the design, construction, and installation of geodesic domes on the tanks identified in Appendix B.

20. Beginning one hundred eighty Days (180) after the Effective Date and continuing until the Mitigation Action is completed in accordance with this Decree, Valero shall provide the United States with an annual progress report. Each progress report shall contain:

- a. A summary of the current status of the Mitigation Action;
- b. A description of the activities undertaken to implement the Mitigation Action since submission of the last progress report; and
- c. A description of any difficulties or delays experienced in the implementation of the Mitigation Action.

21. Within sixty (60) Days following the completion of the Mitigation Action, Valero shall submit to the United States a Mitigation Completion Report. The Mitigation Completion Report shall contain:

- a. A detailed description of each project, including costs incurred and date completed;
- b. A description of any problems encountered in implementing the Mitigation Action and the solutions thereto;
- c. A description of the substantiation tasks performed pursuant to Paragraphs 5, 6, and 7 of Appendix B; and
- d. Certification that the Mitigation Action has been fully implemented pursuant to this Decree.

22. Valero certifies the truth and accuracy of each of the following:

- a. That all estimated cost information provided to EPA in connection with EPA's approval of the Mitigation Action is complete and accurate;
- b. That the data inputs Valero provided to the TankESP version 3.0.14 program were, to the best of its knowledge, accurate;

- c. That, as of the date of executing this Decree, Valero is not required to perform or develop any part of the Mitigation Action by any federal, state, or local law or regulation and is not required to perform or develop any part of the Mitigation Action by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- d. That the Mitigation Action is not a project that Valero was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;
- e. That Valero has not received and will not receive credit for the Mitigation Action in any other enforcement action; and
- f. That Valero shall neither generate nor use any pollutant reductions from the Mitigation Action as netting reductions, pollutant offsets, or to apply for, obtain, trade, or sell any pollutant reduction credits.

23. Any public statement referring to projects described in this Section, shall include the following language: “This action was undertaken in connection with the settlement of an enforcement action, United States v. Valero Energy Corporation, taken on behalf of the U.S. Environmental Protection Agency to enforce the Clean Air Act.”

VIII. REPORTING AND RECORDKEEPING REQUIREMENTS

24. Any submittals required by Paragraphs 18, 20, and 21, and by paragraph 3 of Appendix B, shall be signed by a responsible corporate official, and shall include the following statement:

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 am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment, for knowingly and willfully submitting a materially false statement.

25. Valero shall send all reports and submittals required by this Decree to the persons or entities designated in Section XV (Notices) of this Decree.

26. The reporting requirements of this Decree do not relieve Valero of any reporting obligations required by the CAA or its implementing regulations, or any other reporting obligation required by any federal, state, or local law, regulation, permit, or other requirement.

27. 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.

28. Whenever any violation of this Decree or any other event affecting Valero's performance under this Decree may pose an immediate threat to public health or welfare or the environment, Valero shall notify the appropriate notices to EPA orally or by electronic transmission as soon as possible, but no later than twenty-four (24) hours after Valero first knew of the violation or event in accordance with Section XV of this Decree (Notices).

IX. STIPULATED PENALTIES

29. Valero shall be liable for stipulated penalties to the United States for violations of this Decree as set forth in this Section unless excused under Section X (Force Majeure).

30. Late Payment of Civil Penalty. If Valero fails to pay the civil penalty required under Section V of this Decree within the time specified in Section V, during the first fifteen (15) Days, Valero shall pay both Interest (calculated from the date that payment was due as specified in Section V of this Decree) and a stipulated penalty of \$1,000 per Day for each Day that Valero's payment is late. Beginning sixteen (16) Days after payment is due, Valero shall pay both Interest

(calculated from the date that payment was due as specified in Section V of this Decree) and a stipulated penalty of \$3,500 per Day for each Day that Valero's payment is late.

31. Reporting Requirements. If Valero fails to timely comply with any of the requirements of subparagraphs (a) – (c) below, the following stipulated penalties shall accrue per violation per Day for each violation:

Period of Noncompliance	Penalty per Violation per Day
1st through 14th day	\$250
15th through 30th day	\$500
31st day and beyond	\$1,500

- a. Provide the progress reports required by Paragraphs 18 and 20;
- b. Provide the Mitigation Completion Report pursuant to Paragraph 21; or
- c. Provide the submittals required by paragraph 3 of Appendix B.

32. Fuels Management System. If Valero fails to audit all Valero Refineries within three (3) years of the Effective Date as specified in Section G of Appendix A, the following stipulated penalties shall accrue per violation per Day for each violation:

Period of Noncompliance	Penalty per Violation per Day
1st through 14th day	\$1,000
15th through 30th day	\$5,000
31st day and beyond	\$10,000

If Valero fails to timely comply with any of the requirements of subparagraphs (a) through (d) below, the following stipulated penalties shall accrue per violation per Day for each violation:

Period of Noncompliance	Penalty per Violation per Day
1st through 14th day	\$250
15th through 30th day	\$500
31st day and beyond	\$1,500

- a. Submit Valero's corporate procedures and protocols and staff training materials to EPA in accordance with the deadlines of Sections B and C of Appendix A;
- b. Implement Valero's corporate procedures and protocols and staff training program as specified in Sections B and C of Appendix A;
- c. Adopt lab measurement system precision and accuracy monitoring software at each of the Valero Refineries that operates a laboratory to analyze fuel for compliance with the Fuels Regulations as specified in Section D of Appendix A; or
- d. Participate in the RFG and Diesel cross-check programs each month at all Valero Refineries that test reformulated and conventional gasoline for properties required to be reported to EPA and MVNRLM diesel fuel for properties required to be tested under the Fuels Regulations as specified in Section E of Appendix A.

33. Tank VOC Emissions Mitigation Action. If Valero fails to timely comply with any of the requirements of subparagraphs (a) – (c) below, the following stipulated penalties shall accrue per violation per Day for each violation:

Period of Noncompliance	Penalty per Violation per Day
1st through 14th day	\$1,000
15th through 30th day	\$5,000
31st day and beyond	\$10,000

- a. Install the geodesic domes described in Section VII of this Decree by the Completion Dates as specified in Appendix B;
- b. Maintain the integrity of the geodesic domes identified in Section VII and Appendix B consistent with recognized industry practices, if applicable, and good engineering judgement; and
- c. Perform tasks to substantiate the emissions reductions of the geodesic domes, including scanning, inspecting, and repairing the tanks as specified in Appendix B.

34. 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. Stipulated penalties shall accrue regardless of whether the United States provides Valero notice of the violation(s) of this Decree.

35. Unless Valero initiates a challenge pursuant to Section XI (Dispute Resolution) of this Decree, Valero shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

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

37. Stipulated penalties shall continue to accrue as provided in Paragraph 53 during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement or by a decision of the EPA that is not appealed to the Court, Valero shall pay accrued penalties determined to be owing,

together with Interest, to the United States within thirty (30) Days of the Effective Date of the agreement or the receipt of the EPA's decision or order.

- b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Valero 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 subparagraph (c), below.
- c. If any Party appeals the District Court's decision, Valero shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

38. Valero shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Section V (Civil Penalty), 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.

39. If Valero fails to pay stipulated penalties according to the terms of this Consent Decree, Valero shall be liable for Interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

40. Stipulated penalties paid pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax-deductible expenditures for the purposes of federal law. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Valero's failure to pay any stipulated penalties.

41. Subject to the provisions of Section XIII of this Consent Decree (Effect of Settlement/Reservation of Rights), 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 for Valero's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the requirements of CAA Section 211, 42 U.S.C. § 7545, and its implementing regulations, including 40 C.F.R. Part 80, Valero shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation. In no event shall any penalty assessed against Valero exceed the maximum civil penalty that may be assessed under the Clean Air Act, 42 U.S.C. §§ 7524(b) and 7545(d), for any individual violation of this Consent Decree.

X. FORCE MAJEURE

42. "Force Majeure," for the purposes of this Decree, is defined as any event arising from causes beyond the control of Valero or of any entity controlled by Valero, including but not limited to, Valero's officers, employees, agents, contractors, and consultants, which delays or prevents the performance of any obligation under this Decree despite Valero's best efforts to fulfill the obligation. The requirement that Valero 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 or (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Depending upon the circumstances and Valero's response to such circumstances, failure of a permitting authority to issue a necessary permit in a timely fashion may constitute a Force Majeure event where the failure of the permitting authority to act is beyond the control of Valero and Valero has taken all steps available to it to obtain the necessary permit, including, but not limited to: submitting a complete and timely permit application; responding to requests for additional information by the permitting authority in a timely fashion; and accepting lawful permit terms and conditions after expeditiously exhausting

any legal rights to appeal terms and conditions imposed by the permitting authority. Force Majeure does not include Valero's financial inability.

43. If any event occurs or has occurred that may delay the performance of, or otherwise cause a violation of, any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Valero shall provide notice orally or by electronic or facsimile transmission to the EPA Attorney Advisor listed in Section XV (Notices), within seventy-two (72) hours of when Valero first knew that the event might cause a delay. Within fourteen (14) Days thereafter, Valero shall provide in writing to the EPA 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; Valero'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 Valero, such event may cause or contribute to an endangerment to public health, welfare or the environment. Valero shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude Valero 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. Except with regard to Valero's development and implementation of the FMS, Valero shall be deemed to know of any circumstances of which Valero, any entity controlled by Valero, or Valero's contractors knew or should have known. With regard to Valero's development and implementation of the FMS, Valero shall be deemed to know of any circumstances of which Valero or any entity controlled by Valero knew or should have known.

44. If the EPA 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 by the EPA 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 EPA will notify Valero in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

45. If EPA does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, the EPA will notify Valero in writing of its decision. If Valero 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 EPA's notice. In any such proceeding, Valero 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 Valero complied with the requirements of Paragraphs 42 and 43, above. If Valero carries this burden, the delay at issue shall be deemed not to be a violation by Valero of the affected obligation of this Consent Decree identified to the EPA and the Court.

XI. DISPUTE RESOLUTION

46. Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree. Valero's failure to seek resolution of a dispute under this Section shall preclude

Valero from raising such issue as a defense to an action by the United States to enforce any obligation of Valero under this Decree.

47. 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 one Party sends to the other a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) 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 final position advanced by the United States shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, Valero invokes formal Dispute Resolution procedures as set forth below.

48. Formal Dispute Resolution. Valero 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 Valero's position and any supporting documentation relied upon by Valero.

49. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Valero'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 Valero, unless Valero files a motion for judicial review of the dispute in accordance with the following Paragraph.

50. Valero may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph; provided, however, that the time to file such motion may be extended by written agreement of both parties. The motion shall contain a written statement of Valero'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.

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

52. Standard of Review. Except as otherwise provided in this Decree, in any dispute brought under Paragraph 48 of this Decree (Formal Dispute Resolution), Valero shall bear the burden of demonstrating that its position complies with this Decree and the CAA and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and Valero reserves the right to argue that a different standard of review is applicable.

53. The invocation of Dispute Resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Valero under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall

be stayed pending resolution of the dispute as provided in Paragraph 37. If Valero does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. INFORMATION COLLECTION AND RETENTION

54. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Decree, at a reasonable time, upon presentation of credentials, to:

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

55. Until two (2) years after the termination of this Consent Decree, Valero shall preserve and retain, and shall instruct its contractors and agents to preserve and retain, all records and documents (including those in electronic form) now in its or its contractors' or agents' possession or control, or which come into its or its contractors' or agents' possession or control, that relate to Valero's performance of the material requirements of Sections VI (Fuels Management System) and VII (Tank VOC Emissions Mitigation Action) of this 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, Valero shall provide copies of any non-privileged documents, records, or other non-privileged information required to be maintained under this Paragraph. The records retention requirement imposed under

this Consent Decree does not affect, modify or excuse Valero from compliance with any other records retention requirements imposed by federal, state or local laws or regulations.

56. At the conclusion of the document retention period identified in Paragraph 55 Valero may destroy such documents, records, or other information. However, upon request by the United States, Valero shall deliver any such non-privileged documents, records, or other information to the United States. If Valero asserts that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law, it shall provide the United States with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the document, record, or information; and (vi) the privilege asserted. However, no documents, records, or other information created or generated pursuant to the requirements of this or any other Decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of documents, records, or other information, the documents, records, or other information shall be provided to the United States in redacted form to mask the privileged information only. Valero shall retain all documents, records, or other information that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim before this Court and any such dispute has been resolved in Valero's favor. Absent a dispute over a claim of privilege, nothing in this Paragraph shall operate to extend the document retention period set forth in Paragraph 55 above.

57. Valero may assert that information required to be provided under this Consent Decree is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any

information that Valero seeks to protect as CBI, Valero shall follow the procedures set forth in 40 C.F.R. Part 2.

58. This 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 laws, regulations, or permits, nor does it limit or affect any duty or obligation of Valero to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

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

60. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree.

61. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA or its implementing regulations, or under other federal laws, regulations, or permit conditions.

62. The United States 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, any of Valero's facilities, whether related to the violations addressed in this Decree or otherwise.

63. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to Valero's alleged violations, Valero 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 59.

64. This Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Valero is responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations, and permits and Valero's compliance with this 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 Decree, warrant or aver in any manner that Valero's compliance with any aspect of this Decree will result in compliance with provisions of the CAA, or with any other provisions of federal, state, or local laws, regulations, or permits.

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

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

XIV. COSTS

67. 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 timely paid by Valero.

XV. NOTICES

68. Unless otherwise provided herein, whenever notifications, submissions, or communications are required by this Decree, they shall be made in writing addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
RE:

John N. Moscato
Senior Counsel
Environment and Natural Resources Division,
Environmental Enforcement Section
United States Department of Justice
999 18th Street, South Terrace - Suite 370
Denver, CO 80202
john.moscato@usdoj.gov

To EPA:

Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Mail Code 2422A
Washington, D.C. 20460

Melissa Schefski
Attorney Advisor
Air Enforcement Division
U.S. Environmental Protection Agency
1595 Wynkoop Street (8MSU)
Denver, CO 80202
schefski.melissa@epa.gov
(303) 312-6842

To Valero:

Elizabeth Bourbon
Senior Managing Counsel
Valero Energy Corporation
P.O. Box 696000
One Valero Way
San Antonio, TX 78249
Elizabeth.bourbon@valero.com
(210) 345-4650

Matthew W. Morrison
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW
Washington, D.C. 20036
matthew.morrison@pillsburylaw.com
(202) 663-8036

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

70. 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

71. The Effective Date of this Consent Decree shall be the date 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

72. 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

73. 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.

74. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by that Section, 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).

75. In the event that the requirements of CAA Section 211, 42 U.S.C. § 7545, or its implementing regulations, including 40 C.F.R. Part 80, are modified such that alternative methods of complying with the requirements that are the subject of the Fuels Management System in Appendix A become available to Valero, Valero may prepare a modified Fuels Management System that Valero believes conforms to the current statutory or regulatory requirements. To the

extent the modification of the Fuels Management System does no more than incorporate alternative methods of complying with the requirements that are the subject of the Fuels Management System in Appendix A, the modification of the Fuels Management System would not be a material change to this Decree and approval by the Court would not be required.

XIX. TERMINATION

76. If Valero has satisfactorily completed its obligations under this Decree, including implementation of the Fuels Management System under Section VI, the Tank VOC Emissions Mitigation Action under Section VII, and payment of the civil penalty under Section V (Civil Penalty) and any outstanding stipulated penalties under Section IX (Stipulated Penalties), then Valero may serve upon the United States a Request for Termination.

77. For purposes of this Section, “implementation of the Fuels Management System under Section VI” of the Decree means that Valero has completed at least one audit at each Valero Refinery.

78. The Request for Termination shall include, at a minimum, a detailed statement describing the basis for Valero’s determination that Valero has satisfied the requirements described above, all necessary supporting documentation for that statement, and a proposed “Joint Stipulation and Motion to Terminate the Consent Decree.”

79. If the United States agrees that Valero has satisfactorily complied with the requirements for termination of this Consent Decree, then Parties shall file a “Joint Stipulation and Motion to Terminate the Consent Decree” requesting that the Court terminate this Consent Decree.

80. If the United States does not agree that Valero has satisfactorily complied with the requirements for termination of this Decree, it shall so notify Valero in writing which requirements for termination it has determined are not satisfied and the basis for its determination. In such a

case, Valero may take additional actions to satisfy the requirements for termination which the United States has determined have not been satisfied and then submit a revised Request for Termination.

81. If the United States does not agree that the Decree may be terminated, or if Valero does not receive a response from the United States within sixty (60) Days of Valero's submission of the Request for Termination, Valero may invoke dispute resolution under Section XI of this Decree (Dispute Resolution). Valero, however, shall not invoke dispute resolution under this Section until at least 60 Days after service of Valero's Request for Termination.

XX. PUBLIC PARTICIPATION

82. 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. Valero 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 Valero in writing that it no longer supports entry of the Decree.

XXI. SIGNATORIES/SERVICE

83. Each undersigned representative of Valero and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice 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.

84. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Valero agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

85. The Parties agree that Valero need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Decree.

XXII. INTEGRATION

86. 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. Other than items prepared and/or submitted and approved pursuant to this Decree, 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. FINAL JUDGMENT

87. 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 Valero.

XXIV. APPENDICES

88. The following appendices are attached and incorporated as part of this Consent Decree:

“Appendix A” contains the requirements for the Fuels Management System; and

“Appendix B” contains the requirements for the Tank VOC Emissions Mitigation Action.

Dated and entered this _____ day of _____, 2020.

HONORABLE xxxxxxxx
United States District Court Judge

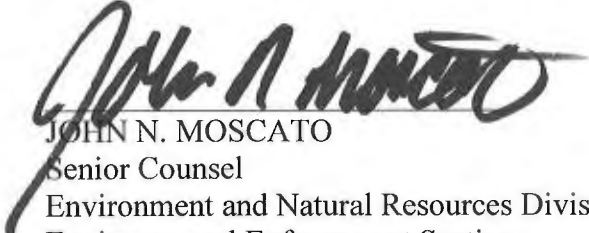
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Valero Energy Corporation.

For the United States of America:

Bruce Gelber
Deputy Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

Date:

10/9/2020



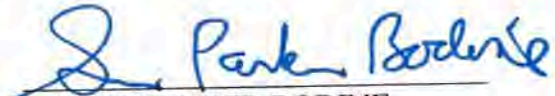
JOHN N. MOSCATO

Senior Counsel
Environment and Natural Resources Division
Environmental Enforcement Section
United States Department of Justice
999 18th Street, South Terrace -Suite 370
Denver, CO 80202

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Valero Energy Corporation.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

10/13/20
Date


SUSAN PARKER BODINE
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

ROSEMARIE A. KELLEY
Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

THOMAS P. CARROLL
Acting Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 2422A
Washington, D.C. 20460

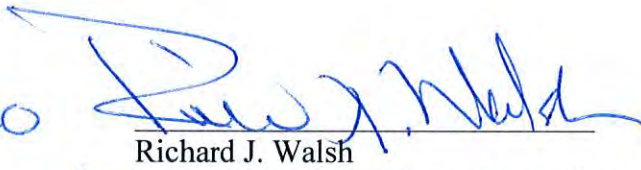
MELISSA SCHEFSKI
Attorney Advisor
Air Enforcement Division
U.S. Environmental Protection Agency
1595 Wynkoop Street (8MSU)
Denver, CO 80202

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v.

Valero Energy Corporation:

For Valero Energy Corporation (EPA Company No. 4006), Valero Refining – New Orleans, LLC, The Premcor Refining Group, Inc., Valero Refining – Texas, L.P., Diamond Shamrock Refining, L.P., Valero Refining Company – Tennessee, L.L.C., Valero Marketing and Supply Company, Hammond Mainline Pipeline Company LLC, and Ultramar, Inc.:

Sept. 25, 2020
Date:



Richard J. Walsh
^{SR.} Vice President and ~~Deputy~~ General Counsel
Valero Energy Corporation
One Valero Way
San Antonio, TX 78249

APPENDIX A

SYSTEM-WIDE FUELS MANAGEMENT SYSTEM (“FMS”)

A. *Introduction*

1. This FMS is intended to facilitate Valero’s compliance with the Fuels Regulations. The FMS shall cover all conventional and reformulated gasoline and MVNRLM diesel fuel produced by the Valero Refineries, as defined in Section III (Definitions) of this Consent Decree, except where otherwise noted.

2. The FMS shall include the requirements specified below. After termination of the Consent Decree, Valero may elect in its sole discretion whether to continue implementation of the FMS as a means of facilitating and maintaining compliance with the Fuels Regulations.

3. Nothing in the Consent Decree or the FMS alters Valero’s obligation to comply with Section 211 of the CAA or 40 C.F.R. Parts 79 and 80.

4. Valero shall establish a Fuels Management Steering Committee to oversee the development and implementation of the FMS. The Steering Committee shall be comprised of representatives at the Vice President level or above of different departments within Valero that play a critical role in fuels compliance, such as refinery operations, planning and economics, legal, information systems, and any other department Valero deems appropriate for such an oversight role.

B. *Corporate Procedures and Protocols*

5. Within 180 Days of the Effective Date of the Consent Decree, Valero shall submit to EPA for review corporate procedures and protocols on the following fuel compliance topics:

- a. Procedures and protocols to ensure compliance with the standards for conventional and reformulated gasoline, including volatility, benzene, and sulfur requirements and for MVNRLM diesel fuel, including sulfur requirements;

- b. Procedures and protocols to ensure compliance with the requirements for tank sampling of conventional and reformulated gasoline (including requirements for blending previously certified gasoline) and for tank sampling of MVNRLM diesel fuel, as described more fully below in Section F (Refinery Batch Sampling and Sample Management Practices) of this Appendix;
- c. Procedures and protocols for ensuring compliance with laboratory analyses of fuels, as set forth in 40 C.F.R. § 80.47 for conventional and reformulated gasoline, and in 40 C.F.R. §§ 80.580, 80.584, and 80.585 for MVNRLM diesel fuel;
- d. Procedures and protocols to ensure compliance with the requirements in the Fuels Regulations for reporting and recordkeeping; and
- e. Procedures to investigate and respond to any incident that results in a violation of the standards in the Fuels Regulations.

6. Within 270 Days of the Effective Date of the Consent Decree, Valero shall implement the corporate procedures and protocols described in the preceding Paragraph. Although each Valero Refinery is expected to follow the procedures and protocols in the FMS, any Valero Refinery may request permission from the Fuels Management Steering Committee to add or substitute facility-specific approaches based on the particular circumstances of each Refinery.

C. *Staff Training*

7. Within 365 Days of the Effective Date of the Consent Decree, Valero shall develop and implement a program to provide training to all employees and contractors who work at Valero Refineries and who are involved with carrying out the FMS or ensuring compliance with the Fuels Regulations, including tank samplers, laboratory technicians, lab managers, and blenders, as well as fuel schedulers and traders.

8. The training program shall consist of computer-based and instructor-led training. The computer-based training shall be accessible through the company's intranet to all Valero employees and authorized onsite contractors who are involved with carrying out the FMS or ensuring compliance with the Fuels Regulations. To the extent any contractor not authorized to access the Valero intranet is used to conduct tank sampling, Valero shall provide the training materials to the contractor and require the contractor to provide the same or equivalent training to each employee responsible for conducting tank sampling or sample analysis at a Valero Refinery. Valero shall include testing in the training program materials to evaluate the participants' understanding of the subject matter.

9. In addition to computer-based training, Valero shall also develop a program to provide field training for appropriate categories of employees, including personnel involved in sampling of fuel in tanks and sample analysis.

10. The training program shall include a review of Valero's FMS and any other Valero standard operating procedures relevant to complying with the Fuels Regulations.

D. *Quality Assurance System for Fuels Laboratories*

11. Within 90 Days of the Effective Date, Valero shall implement lab measurement system precision and accuracy monitoring software for compliance with 40 C.F.R. § 80.47 for conventional and reformulated gasoline, and with 40 C.F.R. §§ 80.47, 80.580, 80.584, and 80.585 for MVNRLM diesel fuel, at each of the laboratories operated by Valero at the Valero Refineries to analyze fuels for compliance with the Fuels Regulations. This software will automate real-time notifications of broken statistical quality control limits.

12. Valero's FMS shall adopt the ASTM methods that are incorporated by reference in the Fuels Regulations for all conventional and reformulated gasoline and MVNRLM diesel fuel

produced by Valero for distribution or sale in the United States. The ASTM methods themselves will be made available to affected staff.

13. If Valero discovers that a test instrument used by Valero to analyze fuels for compliance with the Fuels Regulations at a Valero Refinery is out of control for either accuracy or precision, Valero will investigate as appropriate to determine the cause, take corrective action to bring the instrument back into control, and document the investigation and corrective action. Valero will not use the instrument to determine compliance until corrective action is taken and the instrument is back in control.

14. Valero must include, in any agreement with an independent laboratory testing Valero fuel, a requirement that the laboratory comply with all applicable Fuels Regulations.

E. *Participation in Cross-Check Programs*

15. Under the FMS, all Valero refineries that test gasoline for properties required to be reported to EPA under 40 C.F.R. §§ 80.1-80.1363 and 80.1500-80.1667 of the Fuels Regulations will participate in the RFG Crosscheck Program each month for all parameters covered by that program for gasoline. The requirements of the RFG Crosscheck Program are set forth on ASTM International's website at http://www.astm.org/STATQA/Reform_Gas.htm. The RFG Crosscheck Program is intended to provide Valero laboratories with a statistical quality assurance tool to monitor, improve and maintain performance in laboratory testing.

16. Under the FMS, all Valero Refineries that test MVNRLM diesel fuel for properties required to be tested under the Fuels Regulations will participate in the Diesel Crosscheck Program each month for all parameters covered by that program. The requirements of the Diesel Crosscheck Program are set forth on ASTM International's website at <https://www.astm.org/STATQA/DieselFuel.htm>. Like the RFG Crosscheck Program, the Diesel

Crosscheck Program is intended to provide Valero laboratories with a statistical quality assurance tool to monitor, improve and maintain performance in laboratory testing.

F. *Refinery Batch Sampling and Sample Management Practices*

17. The FMS shall include the establishment of uniform procedures to collect representative samples for certification testing for each batch of conventional and reformulated gasoline and MVNRLM diesel fuel produced by any Valero Refinery, including but not limited to:

- a. Batch sampling procedures for tanks that have appropriate sampling access to collect running samples or upper, middle, and lower samples as described by ASTM standard practice D4057 (sections for Running or All-Level Sampling and Tap Sampling, respectively);
- b. Batch sampling procedures for tanks without appropriate sampling access to collect running samples or upper, middle, and lower samples as described by ASTM standard practice D4057 (sections for Running or All-Level Sampling and Tap Sampling, respectively);
- c. Procedures to ensure that each batch of conventional and reformulated gasoline and MVNRLM diesel fuel produced by any Valero Refinery is homogeneous at the time such fuel is sampled for certification testing;
- d. Procedures for any Valero Refinery that utilizes an in-line blending exemption approved under 40 C.F.R. §§ 80.65(f)(4) and 80.1630(a)(4) to confirm sample representativeness consistent with its approved in-line blending waiver;
- e. Protocols for sampling and handling samples, including ASTM D5842 (Standard Practice for Sampling and Handling of Fuels for Volatility Measurement) and

ASTM D5854 (Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products);

- f. Identification of the specific procedure(s) used for sampling at each Valero Refinery batch certification tank; and
- g. The recertification process for off-specification batches of conventional gasoline, reformulated gasoline, or MVNRLM diesel fuel that require re-blending, re-confirmation of homogeneity and new batch certification sampling.

18. Valero must include, in any agreement with any contractor involved in sampling Valero fuel, a requirement that the contractor comply with all applicable Fuels Regulations and the procedures established in Paragraph 17, above.

G. *Audit Program*

19. The FMS shall include a program by which Valero conducts periodic audits to evaluate compliance with the Fuels Regulations and the FMS and takes corrective measures as necessary. Valero shall prioritize the audits of the Valero Refineries based on output capacity, turnaround schedules, and other engineering, staffing and operational considerations. Valero shall audit all Valero Refineries and their respective onsite laboratories (if operated by Valero) within three (3) years of the Effective Date; provided, however, that Valero shall be given credit for any audits that it performed in accordance with its FMS prior to the Effective Date.

20. Valero shall utilize qualified personnel, from either within Valero or a third-party consulting firm, to conduct the field audits. The audit team must have competence in the regulatory fuels programs under Title II of the Clean Air Act.

21. Valero shall also train Valero fuels staff to conduct the periodic field audits. This training may be provided by a third party or by Valero subject matter experts. If Valero elects to use its

own employees for the audit, its employees cannot audit the individual facilities at which they work.

22. One or more Valero representatives with a comprehensive understanding of the FMS and the Fuels Regulations shall accompany or otherwise be available to the audit team to assist the team in understanding how the FMS works and applies to specific operations and employees. Other Valero representatives may also participate in the on-site audits as observers, but such representatives shall not interfere with the independent judgment of the auditing team. Auditing teams shall exercise their independent judgment in conducting all audits. Immediately before or after the completion of an audit, the auditing team shall provide informal oral feedback to the refinery on any potential areas of concern. Valero shall prepare an Audit Report within 90 Days after the completion of each Valero Refinery audit. The Valero audit team shall provide a copy of the Audit Report to the audited refinery and to an appropriate representative from Valero's corporate environmental compliance staff. The Audit Report shall include the following information:

- a. The period of time covered by the audit;
- b. The date(s) the on-site portion of the audit was conducted;
- c. Identification of audit team members;
- d. Identification of Valero's representatives and any other personnel observing the audit;
- e. The audit findings, including a summary of the Valero Refinery's compliance with each separate element of the FMS; and
- f. Recommendations by the auditing team based on the audit findings and any areas of concern.

23. The FMS shall include provisions to ensure that, upon receiving the Audit Report for a given Valero Refinery, Valero shall investigate and undertake any necessary corrective action to address the audit findings.

24. Within 90 Days of receiving an Audit Report for a given Valero Refinery, Valero shall develop a Corrective Action Plan to address any audit findings. The Corrective Action Plan shall identify the results of the investigation of all concerns found by the audit and provide specific deliverables, responsibility assignments, and an implementation schedule. Valero shall include in its Corrective Action Plan any Audit Report recommendations that were not adopted, as well as the basis for its decision to not pursue corrective action. Valero shall also include in its FMS procedures to ensure completion of the measures called for in the Corrective Action Plan.

25. Within 180 Days of receiving the final Audit Report for a given Valero Refinery, Valero's corporate environmental compliance staff shall summarize and disseminate to other Valero Refineries any important findings or lessons learned.

H. Fuels Management System Review and Modification

26. Within twelve (12) months of the Effective Date, and annually thereafter, the Fuels Management Steering Committee shall conduct a review of Valero's FMS and shall make any modifications to the program as it deems appropriate.

27. Notwithstanding the preceding Paragraph, the Fuels Management Steering Committee shall amend the FMS as necessary to reflect any revisions to the Fuels Regulations that become effective during the term of the Consent Decree.

28. In addition, the Fuels Management Steering Committee may make interim revisions to the FMS based on adaptive management principles or lessons learned in the course of conducting the Valero Refinery audits described herein.

I. Notification

29. Valero shall promptly inform the United States, in writing, if it encounters any significant problems with the development and implementation of the FMS. Valero shall include in the notification a statement of how Valero intends to address each problem. The United States shall use best efforts to promptly notify Valero of any concerns it may have regarding the timely or satisfactory completion of the requirements of this Appendix; provided, however, that nothing in this provision shall alter or affect the accrual of stipulated penalties as set forth in Paragraph 34 in Section IX (“Stipulated Penalties”) of this Consent Decree.

APPENDIX B

TANK VOC EMISSIONS MITIGATION ACTION*Introduction*

1. Valero shall install and maintain geodesic domes on three gasoline storage tanks at the El Vista Terminal located near its Port Arthur Refinery. Valero shall design and construct the geodesic domes with the objective of achieving the estimated emissions reductions identified in Table B-1 below (which were prepared in accordance with AP-42, Chapter 7, relative to liquid storage tanks).

Table B-1: Geodesic Dome Projects		
Tank	Estimated Annual VOC Reduction (tpy)	Completion Deadline
T2038	5.33	December 31, 2020
T2036	9.12	December 31, 2020
T2037	8.27	December 31, 2020

2. Valero shall install each geodesic dome by the “Completion Deadline” stated in Table B-1, which is enforceable as part of this Decree.

Project Description and Schedule

3. Within 60 Days of the Effective Date of the Consent Decree, Valero shall submit a proposed project schedule for the installation of the three geodesic domes identified in Table B-1.

Along with the schedule, Valero shall submit:

- a. A list and description of the planned project-related activities, including tank inspections and surveys;
- b. A summary of planned maintenance on the tank domes after they are installed;
- c. The specifications of the geodesic domes to be installed;

- d. A copy of the most recent inspection report prepared under 40 C.F.R. § 60.113b for each of the storage tanks prior to dome installation;
 - e. A copy of the most recent engineering inspection report for each tank conducted pursuant to API Standard 653, “Tank Inspection and Repair, Alteration, and Reconstruction,” or equivalent. If the inspection has not been conducted within the time frame required by API Standard 653, Valero must schedule and conduct the inspection before installation of the dome; and
 - f. A statement that Valero does not anticipate that the installation of the geodesic domes identified in Table B-1 will impact fuel supplies at the Port Arthur Refinery.
4. Valero shall promptly inform the United States, in accordance with Paragraph 49 of the Consent Decree, if it encounters any significant problems which result in any substantial delay in installing the tank domes in accordance with the Completion Deadlines in Table B-1.

Substantiation

5. In order to substantiate the emissions reductions of the geodesic dome mitigation actions, Valero shall:
- a. Prepare emissions estimates of the pre-and post-installation emissions using Chapter 7 of AP-42;
 - b. Evaluate the condition of each tank, prior to installation of the dome, by conducting a floating roof inspection in accordance with 40 C.F.R. § 60.113b (Valero may satisfy this requirement by utilizing inspections if they were conducted within the last 24 months of the Effective Date);
 - c. Using a gas-imaging camera in Manual or Auto Mode, examine the tanks after the tank domes are installed to determine if there are leaks in the tanks’ fittings and rim

seals. The gas imaging camera scan must be recorded and a copy of the recording shall be kept at the facility; and

d. During the gas-imaging camera scan for each tank, Valero shall identify any location(s) of any significant gaseous emissions and record such location(s).

6. If the gas-imaging scan indicates the presence of significant gaseous emissions, Valero shall repair the leaks or items after installation of the dome using recognized industry practices, if applicable, and good engineering judgment.

7. If tank dome repairs are undertaken pursuant to the preceding Paragraph, then as soon as practicable after the repair Valero shall conduct an additional floating roof inspection in accordance with 40 C.F.R. § 60.113b and repeat the requirements in Paragraphs 5(c)-(d) and 6.

8. Valero shall promptly inform the United States, in writing, if it encounters any significant problems with the installation or maintenance of the geodesic dome mitigation action that could impact public health or the environment. Valero shall include in the notification a statement of how Valero intends to address each problem. The United States shall use best efforts to promptly notify Valero of any concerns it may have regarding the timely or satisfactory completion of the requirements of this Appendix; provided, however, that nothing in this provision shall alter or affect the accrual of stipulated penalties as set forth in Paragraph 34 in Section IX (“Stipulated Penalties”) of this Consent Decree.