UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES of AMERICA, Plaintiff, and the STATES OF DELAWARE, LOUISIANA, and the NORTHWEST AIR POLLUTION AUTHORITY OF THE STATE OF WASHINGTON, Plaintiff-Interveners, v. MOTIVA ENTERPRISES LLC, EQUILON ENTERPRISES LLC, and DEER PARK REFINING LIMITED PARTNERSHIP, Defendants.	)	Civil Action No.

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America (hereinafter "Plaintiff" or "the United States"), on behalf of the United States Environmental Protection Agency (herein, "EPA"), has simultaneously filed a Complaint and lodged this Consent Decree against Motiva Enterprises LLC, Equilon Enterprises LLC, and Deer Park Refining Limited Partnership (collectively hereinafter "the Companies"), for alleged environmental violations at nine petroleum refineries owned

and/or operated by the Companies;

WHEREAS, the United States and the intervening States have initiated a broad-based compliance and enforcement initiative across the United States involving the petroleum refining industry;

WHEREAS, the Companies' and EPA's primary goal in this Consent Decree is the reduction of nitrogen oxides ("NOx") and sulfur dioxide ("SO2") emissions from refinery heaters and boilers. The Companies have agreed to undertake major and extensive program enhancements involving both installation of air pollution control equipment and establishment of strict management practices to reduce air emissions from those units across all refineries;

WHEREAS, the parties agree that the installation of equipment and implementation of controls pursuant to this Consent Decree will achieve major improvements in air quality control, and also that certain actions that the Companies have agreed to take are expected to achieved advances in technology and methodology for air pollution control;

WHEREAS, the parties acknowledge that this process, which was initiated by the Companies, is an innovative approach to resolve potential compliance issues while simultaneously advancing the goals of the Clean Air Act;

WHEREAS, the Companies have not answered or otherwise

responded to the Complaint in light of the settlement memorialized in this and other Consent Decrees;

WHEREAS, the United States' Complaint alleges that the Companies have been and are in violation of certain provisions of the Clean Air Act (the "Act"), 42 U.S.C. §7401 et seq., and implementing regulations;

WHEREAS, the States of Delaware and Louisiana, and the Northwest Air Pollution Authority have filed Complaints in Intervention ("Plaintiff-Interveners"), alleging that the Companies were and are in violation of the applicable Clean Air Act State Implementation Plans ("SIPs"), and other state statutory and regulatory requirements;

WHEREAS, the Texas Natural Resource Conservation Commission ("TNRCC") has expressed general approval of the terms of this Consent Decree;

WHEREAS, the Companies have denied and continue to deny the violations alleged in each of the Complaints and maintain their defenses to the violations alleged;

WHEREAS, the Companies have, in the interest of settlement, agreed to undertake installation of air pollution control equipment and enhancements to air pollution management practices at the nine refineries to reduce air emissions;

WHEREAS, projects undertaken pursuant to this Consent Decree are for the purpose of abating or controlling atmospheric

pollution or contamination by removing, reducing, or preventing the creation or emission of pollutants ("pollution control facilities") and as such may be considered for certification as pollution control facilities by federal, state or local authorities;

WHEREAS, the Companies have waived any applicable federal or state requirements of statutory notice of the alleged violations;

WHEREAS, the Companies have identified and self-reported certain potential violations of environmental statutes and agreed that settlement of these issues is the most expeditious method to resolve these potential violations;

WHEREAS, the United States, Plaintiff-Interveners, and the Companies have agreed that settlement of this action is in the best interest of the parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter; and

WHEREAS, the United States, Plaintiff-Interveners, and the Companies have consented to entry of this Consent Decree without trial of any issues;

NOW, THEREFORE, without any admission of fact or law, and without any admission of the violations alleged in the Complaints, it is hereby ORDERED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Complaints state a claim upon which relief can be

granted against the Companies under Sections 113 and 167 of the CAA, 42 U.S.C. §§ 7413 and 7477, and 28 U.S.C. § 1355. This Court has jurisdiction of the subject matter herein and over the parties consenting hereto pursuant to 28 U.S.C. § 1345 and pursuant to Sections 113 and 167 of the CAA, 42 U.S.C. §§ 7413 and 7477.

2. Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c).

II. APPLICABILITY

3. The provisions of this Consent Decree shall apply to and be binding upon the United States, the States of Delaware and Louisiana, the Northwest Air Pollution Authority of the State of Washington, and the Companies as well as the Companies' officers, employees, agents, successors and assigns, and shall apply to the Companies' refineries for the life of the Consent Decree. In the event the Companies propose to sell or transfer any of their refineries subject to this Consent Decree, they shall advise in writing such proposed purchaser or successor-in-interest of the existence of this Consent Decree and provide a copy of the Consent Decree, and shall send a copy of such written notification by certified mail, return receipt requested, to EPA before such sale or transfer, if possible, but no later than the closing date of such sale or transfer. This provision does not relieve the Companies from having to comply with any applicable

state or local regulatory requirement regarding notice and transfer of facility permits.

III. FACTUAL BACKGROUND

4. The Companies operate nine petroleum refineries for the manufacture of various petroleum-based products, including gasoline, diesel, and jet fuels, and other marketable petroleum by-products.

5. The Companies own and operate refineries located as follows:

Delaware City, Delaware (Motiva)
Norco, Louisiana (Motiva)
Convent, Louisiana (Motiva)
Port Arthur, Texas (Motiva)
Bakersfield, California (Equilon)
Los Angeles, California (Equilon)
Martinez, California (Equilon)
Puget Sound, Washington (Equilon)

The Deer Park, Texas refinery is owned by Deer Park Refining Limited Partnership (DPRLP), and operated by its general partner, Shell Oil Company.

6. Petroleum refining involves the physical, thermal and chemical separation of crude oil into marketable petroleum products.

7. The petroleum refining process at the Companies' nine refineries results in emissions of significant quantities of criteria air pollutants, including nitrogen oxides ("NOX"), carbon monoxide ("CO"), particulate matter ("PM"), sulfur dioxide ("SO2"), as well as volatile organic compounds ("VOCs") and

hazardous air pollutants ("HAPs"), including benzene. The primary sources of these emissions are the fluid catalytic cracking units ("FCCUs"), the fluid coking unit ("FCU")(at Delaware City only), process heaters and boilers, the sulfur recovery plants, the wastewater treatment system, fugitive emissions from leaking components, and flares throughout the refinery.

IV. DEFINITIONS

8. Unless otherwise expressly provided herein, all requirements are effective upon entry of this Consent Decree and the terms used in this Consent Decree shall have the meaning given to those terms in the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the regulations promulgated thereunder. In addition, the following definitions shall apply:

(a) "Prior Actual Level of Emissions" is defined as actual emissions of NOx in tons per year during calendar years 1998 and 1999 (or prior allowable emissions where actuals exceed allowable) as presented in Attachment 1 (1998-1999 Actual Heater and Boiler NOx Emissions by Unit) to this Consent Decree;

(b) "Future Allowable Level of Emissions" is defined as the emission rate for each controlled heater and boiler in tons of NOx per year as determined by permitted levels of emissions for each controlled heater and boiler in pounds of NOx per million BTU heat input (at the higher heating value) and the lower of

capacity or permitted heat input rate in million BTU per hour (at the higher heating value) for each heater and boiler; and

(c). "Qualifying Emissions Cap" is defined as an emissions cap in tons of NOx per year for a group of heaters and boilers within a refinery such that the heaters and boilers under the cap achieve an overall permitted average emission limit of 0.02 pounds of NOx per million BTU or less, on a heat input based weighted average. Each heater and boiler under the cap shall be individually permitted.

(d). "Current Generation Ultra-Low NOx Burner" is defined as those burners currently on the market that are designed to achieve a NOx emission rate of 0.03 to 0.04 lb/mmBTU with consideration given for variations in specific heater operating conditions such as air preheat, fuel composition and bridgewall temperature.

(e). "Next Generation Ultra-Low NOx Burner" is defined as those burners new to the market that are designed to an emission rate of 0.012 to 0.015 lb/mmBTU (HHV), when firing natural gas at typical industry firing conditions at full design load.

(f). "Controlled Heaters and Boilers" shall mean Heaters and Boilers that (1) have already, or will as a result of this Consent Decree, permanently shut down, or (2) have installed one of the following NOx Control technologies: Selective Catalytic Reduction ("SCR"), Selective Non-Catalytic Reduction ("SNCR"), or

current or next generation ultra-low NOx burners. For the purposes of this Consent Decree, the following units located at DPRLP shall be considered a single heater because they collectively share an overhead chamber and vent to shared stacks: H-5301, H-5302, H-5303, H-5304, and H-5350.

V. NOX AND SO2 EMISSIONS REDUCTIONS FROM HEATERS AND BOILERS

Program Summary: The Companies shall implement a program to reduce NOx emissions from refinery heaters and boilers. Reductions will be accomplished through the installation of NOx Controls, the shut down of certain units and the acceptance of lower permitted emission levels. The Companies shall incorporate lower emission levels in all applicable permits. Future compliance with the lower emission limits will be determined through source testing and the use of CEMS, where installed, predictive emissions monitoring systems ("PEMS"), or monitoring of indicator parameters. The Companies shall also accept New Source Performance Standards ("NSPS") Subpart J applicability for heaters and boilers and reduce or eliminate fuel oil firing in their heaters and boilers in an effort to reduce SO2 emissions.

A. NOx EMISSIONS REDUCTIONS FROM HEATERS AND BOILERS

9. On or before December 31, 2008, the Companies shall complete a program to reduce the overall NOx emissions from the Controlled Heaters and Boilers at their refineries in an amount greater than or equal to:

(a) 6413 tons per year as demonstrated by the inequality in Paragraph 10(a) with no use of emissions caps in the demonstration; or

(b) 6789 tons per year as demonstrated by the inequality in Paragraph 10(b) with the use of a qualifying emissions cap or caps in the demonstration.

(c) The Companies must elect either option 9(a) or 9(b) through notification in writing to EPA and the

Plaintiff-Interveners by December 31, 2002. The Companies may propose for EPA approval an alternative to the options in this Paragraph provided that the minimum tonnage reductions can be met under the alternative.

10. The Companies' selection of control technology must at a minimum reduce overall NOx emissions from the Controlled Heaters and Boilers by:

(a) at least 6413 tons per year from a prior actual to future allowable basis so as to satisfy the following inequality:

$$\sum_{i=1}^{n} [(E_{Actual})_i - (E_{Allowable})_i] \geq \text{6413 tons of NOx per year}$$

Where:

$(E_{Allowable})_i$ = The requested portion of the permitted allowable pounds of NOx per million BTU for heater or boiler i)/(2000 pounds per ton)] x [(the lower of permitted or maximum heat input rate capacity in million BTU per hour for heater or boiler i) x (the lower of 8760 or permitted hours per year)] ;

$(E_{Actual})_i$ = The tons of NOx per year prior actual emissions (unless prior actuals exceed allowable emissions, then use allowable) as shown in Attachment 1 for controlled heater or boiler i; and

n = The number of heaters and boilers at all refineries that are controlled.

or

(b) at least 6789 tons per year from a prior actual to future allowable basis so as to satisfy the following inequality:

$$\sum_{g=1}^{k} \left[\left\{ \sum_{h=1}^{m} (E_{Actual})_h \right\} - (E_{Cap})_g \right]_g + \sum_{i=1}^{n} [(E_{Actual})_i - (E_{Allowable})_i] \geq \text{6789 tpy of NOx}$$

Where:

k = The number of qualifying emissions caps;

m = The number of heaters and boilers controlled under the qualifying emissions cap g;

$(E_{Actual})_h$ = The tons of NOx per year prior actual emissions (unless prior actuals exceed allowable emissions, then use

		allowable) as shown in Attachment 1 for controlled heater or boiler h, within the qualifying emissions cap g;
$(E_{cap})_g$	=	The qualifying emissions cap in tons of NOx per year for heaters and boilers 1 through m within qualifying emissions cap g;
n	=	The number of heaters and boilers at all refineries that are controlled but not under a qualifying emissions cap;
$(E_{Actual})_i$	=	The tons of NOx per year prior actual emissions (unless prior actuals exceed allowable emissions, then use allowable) as shown in Attachment 1 for the controlled heater or boiler;
and		
$(E_{Allowable})_i$	=	(The requested portion of the permitted allowable pounds of NOx per million BTU for heater or boiler i)/(2000 pounds per ton)] x [(the lower of permitted or maximum heat input rate capacity in million BTU per hour for heater or boiler i) x (the lower of 8760 or permitted hours per year)] .

11. Attachment 1 to this Consent Decree provides the following information for each of the heaters and boilers at each of refineries:

i. the maximum heat input capacities and allowable heat input capacities in average mmBTU/hr; and
ii. the baseline actual emission rate for both calendar years 1998 and 1999 in lbs/mmBTU and tons per year.

12. The Companies shall achieve two-thirds of the combined NOx emissions reductions from the Controlled Heaters and Boilers as set forth in Paragraph 9, by December 31, 2004. The Companies shall demonstrate compliance with this requirement by demonstrating in their March 31, 2005, annual report that they have installed NOx controls and applied for enforceable limits that will achieve the required reductions, pursuant to Part VI (Permitting). For purposes of this Consent Decree, “applied for” shall mean that the Companies have submitted a complete and timely application for the appropriate permit, permit

modification, and/or permit waiver.

13. Joint and several liability under this Section A shall not apply to a Company that has implemented fully its portion of the allocation identified in the Companies' approved Control Plan or the most recent plan update.

14. On or before December 31, 2008, Los Angeles and Convent refineries shall have installed NOx controls on at least 30% of the heater and boiler capacity located at each refinery. The heater and boiler capacity at each refinery shall be based on the allowable Heat Input Capacity during the 1998/1999 baseline period. The Companies may include in the 30% capacity demonstration those heaters and boilers at the Los Angeles and Convent refineries which have been either shut down, or for which the refinery has installed one of the following NOx Control technologies: SCR, SNCR, or current or next generation ultra-low NOx burners. In addition to the identified technologies, heaters for which a NOx emission limit of 0.040 lbs per mmBTU or lower is accepted in a permit may also be included to satisfy the 30% capacity demonstration.

15. On or before December 31, 2008, the Bakersfield, Deer Park, Delaware City, Norco, Port Arthur, Puget Sound, and Martinez refineries shall have installed NOx controls on at least 30 percent of the heater and boiler capacity located at each refinery. The heater and boiler capacity at each refinery shall

be based on the allowable Heat Input Capacity during the 1998/1999 baseline period. Heaters and boilers which the Companies shut down, or for which the Companies obtained an emission limit of 0.040 lbs of NOx per mmBTU or lower may be considered as having NOx controls installed. In the event that preheat requirements prevent a heater or boiler equipped with current generation Ultra low-NOx burners from meeting an emission limit of 0.040 lbs of NOx per mmBTU, a Company may propose in its Control Plan or Update Report that these heaters or boilers be considered as having NOx controls installed, subject to EPA approval.

16. The Companies shall submit a detailed NOx Control Plan ("Control Plan") to EPA for approval by no later than December 31, 2001, with annual updates ("Updates")on March 31 of each year for the life of the Consent Decree. EPA shall approve the Control Plan provided that it meets the requirements of the Consent Decree. Upon receipt of EPA's approval of the initial Control Plan, the Companies shall implement the Control Plan. The Control Plan and its updates shall describe the progress of the NOx emissions reductions program for heaters and boilers towards meeting the requirements of Paragraphs 9 and 12 and shall contain the following for each heater and boiler at each refinery:

i. All of the information required to be in Attachment 1;

ii. The type of data used to derive the emission estimate (i.e. emission factor, stack test, or CEMS data) and the averaging period for the emissions data used in Attachment 1;

iii. The baseline utilization rate in average mmBTU/hr for calendar years 1998 and 1999;

iv. The Companies' identification of the heaters and boilers that are either already controlled and those that are likely to be controlled in accordance with Paragraph 9 and 12;

i. Identification of all heaters and boilers that the Companies have controlled to reduce NOx emissions and plan to control in accordance with Paragraphs 9 and 12;

i. Identification of the type of controls installed or planned with date installed or planned;

ii. The allowable NOx emissions (in lbs/mmBtu) and allowable heat input rate (in mmBTU/hr) obtained or planned, dates obtained or planned, and identification of the permits in which the limits were obtained;

iii. The results of emissions tests and annual average CEMS data (in ppmvd at 3% O2, lb/mmBTU, and tons per year) conducted pursuant to Paragraphs 9 and 12;

iv. The amount in tons per year applied or to be applied toward satisfying Paragraphs 9 and 12; and

v. A description of the achieved and anticipated annual progress toward satisfying Paragraphs 9 and 12 described on a refinery-by-refinery basis.

17. The Control Plan and Updates required under Paragraph 16 shall be certified by the appropriate Company official for each Company responsible for environmental management and compliance at the individual refineries covered by the report, as follows:

> "I certify under penalty of law that I am responsible for environmental management and compliance at the identified refinery and that this information was 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 directions and my inquiry of the person(s) who manage the system, or the

person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete."

18. For heaters and boilers with a capacity of less than 150 mmBTU/hr ("HHV"), for which NOx Controls are installed pursuant to Paragraphs 9 and 10 of this Consent Decree, each Company shall conduct an initial performance test, or CEMS certification within one hundred-eighty (180) days of each heater and boiler start-up following installation of NOx Controls, and either:

(a) Install, or continue to operate, a NOx CEMS at the time of the installation of the NOx Control. For purposes of this Consent Decree, CEMS is defined as a system to continuously monitor NOx emissions that is installed, certified, calibrated, maintained, and operated in accordance with 40 C.F.R. §§ 60.11, 60.13, and 40 C.F.R. Part 60, Appendices A, B and F; or Part 75 and related Appendices. These CEMS will be used to demonstrate compliance with emission limits established under this Section;

(b) Use or develop an approved Predictive Emissions Monitoring System (PEMS) within one hundred-eighty (180) days of each unit's start-up following installation of NOx Control, considering the full range of operating conditions; or

(c) Use the results of the initial performance test to develop the representative operating parameters for each unit to be used as indicators of compliance with the emission limit. The operating parameters shall include, at a minimum, combustion oxygen or excess air and air preheat temperature, where applicable.

19(a). For heaters and boilers with a capacity of 150 mmBTU/hr (HHV) or greater, for which NOx Controls are installed pursuant to Paragraphs 9 and 10 of this Consent Decree, and for

each heater and boiler included in a qualifying emissions cap under Paragraph 10(b), the Company shall install, or continue to operate, a NOx CEMS at the time the NOx Control(s) is (are) installed under this Consent Decree. In the event two (2) or more heaters or boilers vent to a common stack, and one (1) heater or boiler has not had NOx Controls installed, the CEMS sampling point must be set such that the unit(s) with the installed NOx Control is monitored directly.

19(b). Prior to using the NOx reductions obtained by controlling DPRLP heaters H-5301, H-5302, H-5303, H-5304, and H-5350, DPRLP shall submit a monitoring plan to EPA for approval that would provide data sufficient to demonstrate compliance with Paragraph 10 and that accounts for differing NOx concentrations, if any, between the two stacks.

19(c). By no later than ninety (90) days after commencement of operation of the NOx controls, each Company shall install, certify, calibrate, maintain and operate the CEMS pursuant to 40 C.F.R. §§ 60.11 and 60.13, Part 60, Appendices A, B and F; or Part 75, and related Appendices.

20. The requirements of this Section do not exempt the Companies from complying with any and all Federal, state or local requirements that may require technology upgrades based on actions or activities occurring after the date of lodging of this Consent Decree.

21. Each Company shall retain all records required to support their reporting requirements under this Section, for the life of this Consent Decree, unless other regulations require the records to be maintained longer.

B. SO2 and NSPS REQUIREMENTS FOR HEATERS AND BOILERS

22(a). No later than March 31, 2001, Motiva shall discontinue burning of any liquid fuel in any of the heaters and boilers at the Convent and Norco, Louisiana, and Port Arthur, Texas, refineries, except in instances presented in Paragraph 22(b).

22(b). The Companies may burn liquid fuel during periods of natural gas curtailment by suppliers, or periods approved by EPA for purposes of test runs and operator training at each refinery. During periods of natural gas curtailment, test runs and operator training, the Companies shall burn only low sulfur (0.05 wt% sulfur) liquid fuel. Prior to conducting the test runs or operator training at a refinery, the Companies shall submit proposed schedules for such test runs and training periods to EPA for review and approval.

23(a). Delaware City Schedule. Except as allowed under Paragraph 22(b), Motiva shall eliminate burning of any liquid fuel in all heaters and boilers at the Delaware City, Delaware, refinery by the date of lodging of this Consent Decree, except for those heaters and boilers listed below. Motiva shall

eliminate burning of any liquid fuel in these listed heaters and boilers in accordance with the following schedule, and result in the following per day, refinery-wide, maximum liquid fuel burning by the deadlines listed below:

Deadline	**Cessation of Oil Burning in Unit**	**Refinery-Wide Maximum Fuel Oil Burning (bbl/day)**
July 31, 2001	21-H-2	3760
October 30, 2002	Boiler 1	2000
May 31, 2003	Boiler 3	1000
October 31, 2003	Boiler 4	0

23(b). DPRLP Schedule. Except as allowed in Paragraph 22(b), DPRLP shall eliminate burning of any liquid fuel in the FTU-100, FTU-110 and FTU-130 boilers (also known as the Utility South Boilers) by March 15, 2005.

24(a). Each Company agrees that all of its heaters and boilers that burn fuel gas, and those units identified in Attachment 2 are affected facilities regulated under NSPS Subpart J and subject to all of the applicable requirements of NSPS Subpart J. The units identified in Attachment 2 to this Consent Decree will be in compliance with the NSPS Subpart J requirements in accordance with the schedule set forth in Attachment 2.

24(b). As part of the Control Plan and annual Updates required under Paragraphs 11 and 16, the Companies shall provide the status of NSPS Subpart J compliance for the units covered

under Paragraph 24(a).

24(c). During the SRU turnaround at Puget in 2004, the NSPS Subpart J fuel gas limit shall not apply to the sour water stripper overhead gas burned in the CO boilers, provided that good air pollution control practices to minimize emissions are maintained during that turnaround.

VI. PERMITTING

25. Construction. Each Company agrees to apply for and make all reasonable efforts to obtain in a timely manner all appropriate federally enforceable permits (or construction permit waivers) for the construction of the pollution control technology required to meet the above emissions reductions. For any physical or operational changes to emissions units included in an emissions cap as specified in this Consent Decree, the Companies may use either the individual unit's permitted emission rate or the combined permitted emissions rate for the cap to determine the potential to emit for an emissions unit under the cap. If the combined permitted emissions rate under the cap is used, the combined actual emissions for each unit under the cap shall also be used to determine the net emissions change.

26. Operation. As soon as practicable, but in no event later than sixty (60) days following a final determination of emission limits in accordance with Paragraphs 12 and 16(vii), each Company shall apply for and make all reasonable efforts to

incorporate the concentration limits required by this Consent Decree into federally enforceable permits, in addition to Title V permits, for these units and facilities.

27. NSPS Applicability. Each Company shall apply to incorporate into the relevant permits the NSPS Subpart J limits for hydrogen sulfide ("H_2S") content of fuel gas, or SO_2– emissions, where appropriate, for each heater and boiler that combusts fuel gas as set forth in this Section.

VII. EMISSION CREDIT GENERATION

Program Summary: The emissions credit and netting limitations discussed below only apply to the netting units defined in this Section, and only to NOX and SO2 emissions necessary for compliance with EPA's Tier II and Low Sulfur Diesel requirements. The provisions of this Section are for purposes of this Consent Decree only, and may not be used or relied upon by the Companies or any other entity, including any party to this Consent Decree, for any other purpose, in any subsequent permitting or enforcement action, except as provided herein. These provisions are intended to limit the use of reductions made pursuant to this Consent Decree and are not intended to grant use of reductions as in netting and as offsets for reductions that have not been made.

28. Except as provided herein, the Companies shall not generate or use any NOX or SO2 emissions reductions that result from any projects conducted pursuant to this Consent Decree as credits or offsets in any PSD, major non-attainment and/or minor New Source Review ("NSR") permit or permit proceeding. Notwithstanding the above, the Companies may conduct projects pursuant to this Consent Decree that create more emission reductions than required by this Consent Decree. In such

instances, the Companies, with the concurrence of the permitting authority, may retain a portion of the achieved emissions reductions for use as credits or offsets. All other emission sources of NOX and SO2, and any netting associated with other pollutants, are outside the scope of these netting limitations and are subject to PSD/NSR applicability as implemented by the appropriate permitting authority or EPA. Use of reductions in netting and as offsets in any PSD, major non-attainment and/or minor NSR permit or permit proceeding pursuant to the limitations herein shall be further limited by the applicable regulations, and by the PSD, major non-attainment, and/or minor NSR permit.

29. Tier 2 Gasoline. From the reductions made pursuant to this Consent Decree, the Companies shall use only 100 total tons per year of NOx and 100 total tons per year of SO2 from the refineries identified in Paragraph 5 necessary for use as credits or offsets in any PSD, major non-attainment and/or minor NSR permit or permit proceeding occurring after the date of lodging of this Consent Decree for Tier 2 Gasoline projects.

30. The Companies shall only use the credits for projects necessary to meet the requirements of Tier 2 Gasoline, provided that the new or modified emissions units being permitted have emission limits at the time of permitting as follows:

(a) For heaters and boilers, a limit of 0.040 lbs NOX per million BTU or less on a 3-hour rolling average basis;

(b) For heaters and boilers, a limit of 0.1 grains of

hydrogen sulfide per dry standard cubic foot of fuel gas or 20 ppmvd SO2 at 0% O2 both on a 3-hour rolling average;

(c) For heaters and boilers, no liquid or solid fuel firing capabilities;

(d) For FCCUs and FCUs, a limit of 20 ppmvd NOX at 0% O2 or less on a 365-day rolling average basis;

(e) For FCCUs and FCUs, a limit of 25 ppmvd SO2 at 0% O2 or less on a 365-day rolling average basis; and

(f) For SRPs, applicability of NSPS Subpart J emission limits.

31. Low Sulfur Diesel. From the reductions made pursuant to this Consent Decree, the Companies may use 260 total tons per year of NOx and 500 total tons per year of SO2 from the refineries identified in Paragraph 5 as credits or offsets in any PSD, major non-attainment and/or minor NSR permit or permit proceeding occurring after the date of lodging of this Consent Decree necessary to permit the Low Sulfur Diesel projects at each refinery.

32. The Companies shall only use the credits for projects necessary to meet the requirements of the Low Sulfur Diesel rule provided that the new or modified emissions units being permitted have emission limits at the time of permitting as follows:

(a) For heaters and boilers, a limit of 0.02 pounds of NOx per million BTU or less on a 3-hour rolling average basis;

(b) For heaters and boilers, a limit of 0.1 grains of hydrogen sulfide per dry standard cubic foot of fuel gas or 20 ppmvd SO2 at 0% O2, both on a 3-hour rolling average;

(c) For heaters and boilers, no liquid or solid fuel firing

capabilities;

(d) For FCCUs and FCUs, a limit of 20 ppmvd NOX at 0% O2 or less on a 365-day rolling average basis;

(e) For FCCUs and FCUs, a limit of 25 ppmvd SO2 at 0% O2 or less on a 365-day rolling average basis; and

(f) For SRPs, applicability of NSPS Subpart J emission limits.

33(a). If a Company can make a showing to EPA that additional credits are necessary for construction or modification of emission units required by the Tier 2 Gasoline or Low Sulfur Diesel regulations, the Company may request that EPA allow use of additional credits for that purpose in accordance with this Part, not to exceed 5% each for NOx and SO2 of any refinery's total reductions achieved by that date under this Consent Decree.

33(b). A Company shall only use the credits under this Part if it can demonstrate to the United States that, at the time the credits are to be applied, it is otherwise in compliance with all other requirements of this Consent Decree at each of its refineries identified in Paragraph 5. If it is in violation of any Consent Decree requirement at any of its refineries identified in Paragraph 5, the Company shall be prohibited from using any credits until the violation(s) is corrected and any stipulated penalties are paid in full.

VIII. SUPPLEMENTAL and BENEFICIAL ENVIRONMENTAL PROJECTS

34. During the period commencing on the date of entry of

this Consent Decree and ending three (3) years from the date of entry, the Companies collectively shall spend $5.5 million ($5,500,000) on Supplemental Environmental Projects (“SEPs”) and Beneficial Environmental Projects (“BEPs”) in the communities where their refineries are located, in accordance with Attachment 3 to this Consent Decree and in the amounts specified in Paragraphs 35, 36 and 37. The Companies agree that in any public statements regarding the funding of the projects identified in this Consent Decree, the Companies must clearly indicate that these projects are being undertaken pursuant to this settlement. Except as otherwise provided in this Consent Decree, the Companies shall not use or rely on the emission reductions generated as a result of their performance of the SEPs required by this Part in any emissions credit, trading, or netting program.

35. Motiva shall spend $3,000,000 on projects as follows:

(a). $625,000 for state-determined projects in Delaware;

(b). $625,000 for Federal projects in Delaware;

(c). $1,000,000 for Federal projects in Louisiana to enhance the States’ air quality monitoring network which will benefit the areas near the Convent and Norco refineries.

(d). $250,000 for state-determined BEPs in Louisiana;

(e). $500,000 for Federal projects in the communities near the Port Arthur refinery.

36. Equilon shall spend $2,000,000 for Federal projects as follows:

(a). $500,000 for Federal projects in the communities near the Puget refinery, including:

1. Upgrades to NWAPA's ambient monitoring information management system in the March Point, Washington, area;

2. Purchase, installation, operation, and maintenance of two additional ambient monitors in the March Point, Washington, area;

(b). $1,500,000 for Federal projects in the communities near the Martinez, Los Angeles, and Bakersfield, California refineries.

37. Deer Park Refining Limited Partnership shall spend $500,000 for Federal Projects in the communities near the DPRLP refinery.

38. Federal projects at one or more refineries may include:

(a). Purchase, staff, and/or continue funding of mobile or local health clinics for specialized and preventative health care to high-risk children and adults in the communities surrounding one or more of its refineries;

(b). Conduct of a pilot test and evaluation of "Smart LDAR"

technology, using lasers to detect emission leaks, at one or more refineries. Such test and evaluation will be conducted in consultation and coordination with EPA;

(c). Purchase mobile air quality analytical equipment for state or local air authorities;

(d). Improve ambient monitoring systems through projects such as increased portable SOx monitoring devices; improving information management, upgrading PM-10 or NO2 monitors;

(e). Replace cooling tower chlorine systems with bleach systems;

(f). Fund retrofits in truck or school bus fleets to reduce PM NOx emissions;

(g). Fund projects to reduce or eliminate PCBs at refineries;

(h). Improvements in flare gas and vapor recovery systems;

(i). Fund equipment improvements for local air pollution authorities or local emergency response department;

(j). Fund local career centers or innovative workforce programs;

(k). Fund school district programs;

(l). Improve reliability of refinery systems, e.g., sulfur plants, fuel gas treatment systems; or

(m). Provide grant money to state or local clean air projects or cancer studies.

IX. CIVIL PENALTY

39. Within thirty (30) calendar days of entry of this Consent Decree, the Companies shall pay a combined civil penalty in the amount of $9.5 million dollars ($9,500,000). Of the total, $4.4 million shall be paid to the United States. This amount includes the civil penalties associated with Clean Water Act violations at the Port Arthur, Texas, refinery, which are addressed in a separate administrative settlement between EPA and Motiva. The Companies shall pay the civil penalties by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing the USAO File Number and DOJ Case Number 90-5-2-1-07209, and the civil action case name and case number of the Southern District of Texas. The costs of such EFT shall be the Companies' responsibility. Payment shall be made in accordance with instructions provided to the Companies by the Financial Litigation Unit of the U.S. Attorney's Office in the Southern District of Texas. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. The Companies shall provide notice of payment, referencing the USAO File Number and DOJ Case Number 90-5-2-1-07209, and the civil action case name and case number, to the Department of Justice and to EPA, as provided in Paragraph 75 (Notice).

40. Of the total civil penalty, Motiva shall pay $2,800,000

to Plaintiff-Intervener, the State of Delaware. Payment shall be made by EFT to the State of Delaware. The EFT shall be made to the State of Delaware account with Mellon Bank using the following instructions: AVA Number 0310-00037, For the Further Credit of Mellon Delaware/State of Delaware, Account Number 1007-2550. At the day and time of the EFT, immediate oral notice of the transfer shall be given by the Companies to Stanley W. Von Essen, Jr., Fiscal Management Analyst, Delaware Department of Natural Resources and Environmental Control, Office of the Secretary, Financial Services Section at (302) 739-5843. Motiva shall also provide written notice of payment, referencing the USAO File Number and DOJ Case Number 90-5-2-1-07209, and the civil action case name and case number, to the Delaware Department of Justice and DNREC, as provided in Paragraph 75 (Notice).

_____41. Of the total civil penalty, Motiva shall pay $2,300,000 to Plaintiff-Intervener, the State of Louisiana. Payment shall be made in the form of a certified check payable to the "Louisiana Department of Environmental Quality," and delivered to Darryl Serio, Office of the Secretary, P.O. Box 82263, Baton Rouge, Louisiana, 70884.

42. Upon entry of this Decree, this Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil

Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, and other applicable federal authority. The United States and the Plaintiff-Interveners shall be deemed judgment creditors for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

43. No amount of the civil penalty to be paid by the Companies shall be used to reduce their federal or state tax obligations.

X. STIPULATED PENALTIES

44. A Company shall pay stipulated penalties to the United States and the appropriate Plaintiff-Intervener (split 50% to each) for each failure by a Company to comply with the terms of this Consent Decree at its refinery; provided, however, either may elect to bring an action for contempt in lieu of seeking stipulated penalties for violations of this Consent Decree. For each violation, the amounts identified below shall apply on the first day of violation, shall be calculated for each incremental period of violation (or portion thereof), and shall be doubled beginning on the fourth consecutive, continuing period of violation. In the alternative, at the option of the United States and the appropriate Plaintiff-Intervener, stipulated penalties shall equal 1.2 times the economic benefit of a Company's delayed compliance, if this amount is higher than the amount calculated under this Section.

(a) Failure to achieve two-thirds (2/3) of the combined NOx reductions in accordance with Paragraph 12: $200,000 per quarter, per refinery;

(b) Failure to achieve the total combined NOx reductions in accordance with Paragraph 9: $100,000 per quarter, per refinery;

(c) Failure to install NOx controls on at least 30% of the heater and boiler capacity in accordance with Paragraph 14 and 15: $100,000 per quarter, per refinery;

(d) Failure to conduct a performance test, to install, calibrate and operate CEMS, or to establish operating parameters in accordance with Paragraph 19: $2000 per month per unit;

(e) Failure to meet the emission limits and to demonstrate compliance with Paragraphs 9 and 10:

(i) $800 per day for each heater or boiler with capacity of 150 mmBTU/hr (HHV) or greater;

(ii) $400 per day for each heater or boiler with capacity of less than 150 mmBTU/hr (HHV);

(f) Failure to submit the Control Plan and Update Reports in accordance with Paragraph 16: $1000 per report per month;

(g) Failure to perform the SEPs or BEPs in accordance with Part VIII and Attachment 3: $100,000 per quarter, per project;

(h) Failure to spend the amount required for SEPs or BEPs in accordance with Part VIII and Attachment 3: the amount of the shortfall;

(i) Failure to timely pay the civil penalty specified in Part IX: $20,000 per week, plus interest on the amount overdue at the rate specified in 31 U.S.C. § 3717; and

(j) Failure to escrow stipulated penalties as required by this Part: $10,000 per week.

(k) Failure to timely submit a complete permit application under Paragraphs 12, 25 and 26: $1000 per week per unit;

45. The Companies shall pay such stipulated penalties only upon written demand by the United States or the appropriate Plaintiff-Intervener no later than thirty (30) days after the Companies receive such demand. Such payment shall be made to the United States in the manner set forth in Part IX (Civil Penalty) of this Consent Decree; payments to Plaintiff-Intervener the State of Delaware shall be made by submitting a certified check, payable to the State of Delaware, to Kevin Maloney, Deputy Attorney General, Delaware Department of Natural Resources & Environmental Control, Legal Office, 89 Kings Highway, Dover, Delaware 19901; payments to Plaintiff-Intervener the State of Louisiana shall be made by submitting a certified check, payable to the “Louisiana Department of Environmental Quality” and delivered to Darryl Serio, Office of the Secretary, P.O. Box 82263, Baton Rouge, Louisiana, 70884; and payments to Plaintiff-Intervener Northwest Air Pollution Authority shall be made by check to the following address: Northwest Air Pollution Authority, 1600, South Second Street, Mount Vernon, WA 98273-5202. Accompanying correspondence shall reference the Northwest Air Pollution Authority Notice of Violation number when available.

46. Should the Companies dispute their obligation to pay

part or all of a stipulated penalty, they may avoid the imposition of the stipulated penalty for failure to pay a penalty due to the United States and Plaintiff-Interveners by placing the disputed amount demanded by the United States, not to exceed $75,000 for any given event or related series of events at any one refinery, in a commercial escrow account pending resolution of the matter and by invoking the Dispute Resolution provisions of the Consent Decree within the time provided in this Paragraph for payment of stipulated penalties. If the dispute is thereafter resolved in the Companies' favor, the escrow amount plus accrued interest shall be returned to the Companies, otherwise the United States and the appropriate Plaintiff-Intervener shall be entitled to the escrowed amount that was determined to be due by the Court plus the interest that has accrued on such amount, with the balance, including interest, if any, returned to the Companies.

47. The United States and Plaintiff-Interveners reserve the right to pursue any other remedies to which they are entitled, including, but not limited to, additional injunctive relief for the Companies' violations of this Consent Decree. Nothing in this Consent Decree shall prevent the United States and the Plaintiff-Interveners from pursuing a contempt action against the Companies and requesting that the Court order specific performance of the terms of the Decree.

48. Election of Remedy. The United States and Plaintiff-Interveners will not seek both stipulated penalties and civil penalties for the same actions or occurrences as those constituting a violation of the Consent Decree.

XI. RIGHT OF ENTRY

49. Any authorized representative of the EPA or an appropriate state agency, including independent contractors, upon presentation of credentials, shall have a right of entry upon the premises of the Companies' refineries identified in Paragraph 5 at any reasonable time for the purpose of monitoring compliance with the provisions of this Consent Decree, including inspecting plant equipment, and inspecting and copying all records maintained by the Company required by this Consent Decree. Nothing in this Consent Decree shall limit the authority of EPA and the appropriate Plaintiff-Intervener to conduct tests and inspections under Section 114 of the Act, 42 U.S.C. § 7414, or any other statutory and regulatory provision.

XII. FORCE MAJEURE

50. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Consent Decree, an individual Company or the Companies (referred to in this Part as "the Companies") shall notify the United States and the appropriate Plaintiff-Intervener in writing as

soon as practicable, but in any event within twenty (20) business days of when the Companies first knew of the event or should have known of the event by the exercise of due diligence. In this notice the Companies shall specifically reference this Paragraph of this Consent Decree and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by the Companies to prevent or minimize the delay and the schedule by which those measures will be implemented. The Companies shall adopt all reasonable measures to avoid or minimize such delays.

51. Failure by the Companies to comply with the notice requirements of Paragraph 50 as specified above shall render this Part XII voidable by the United States and Plaintiff-Interveners as to the specific event for which the Companies has failed to comply with such notice requirement, and, if voided, it shall be of no effect as to the particular event involved.

52. The United States and the appropriate Plaintiff-Intervener shall notify the Companies in writing regarding their claim of a delay or impediment to performance within twenty (20) business days of receipt of the Force Majeure notice provided under Paragraph 50.

53. If the United States and the appropriate Plaintiff-Intervener agree that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the

Companies, including any entity controlled by them, and that they could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances, or such other period as may be appropriate in light of the circumstances. Such stipulation may be filed as a modification to this Consent Decree by agreement of the parties pursuant to the modification procedures established in this Consent Decree. The Companies shall not be liable for stipulated penalties for the period of any such delay.

54. If the United States and the appropriate Plaintiff-Intervener do not accept the Companies' claim of a delay or impediment to performance, they must submit the matter to this Court for resolution to avoid payment of stipulated penalties, by filing a petition for determination with this Court. In the event that the United States and the appropriate Plaintiff-Intervener do not agree, the position of the United States on the Force Majeure claim shall become the final Plaintiffs' position. Once the Companies have submitted this matter to this Court, the United States and the appropriate Plaintiff-Intervener shall have twenty (20) business days to file its response to said petition. If the Companies submit the matter to this Court for resolution and the Court determines that the delay or impediment to

performance has been or will be caused by circumstances beyond the control of the Companies, including any entity controlled by them, and that they could not have prevented the delay by the exercise of due diligence, the Companies shall be excused as to that event(s) and delay (including stipulated penalties), for all requirements affected by the delay for a period of time equivalent to the delay caused by such circumstances or such other period as may be determined by the Court.

55. The Companies shall bear the burden of proving that any delay of any requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond their control, including any entity controlled by them, and that they could not have prevented the delay by the exercise of due diligence. The Companies shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates.

56. Unanticipated or increased costs or expenses associated with the performance of the Companies' obligations under this Consent Decree shall not constitute circumstances beyond their control, or serve as a basis for an extension of time under this Part.

57. Notwithstanding any other provision of this Consent

Decree, this Court shall not draw any inferences nor establish any presumptions adverse to any party as a result of the Companies delivering a notice of Force Majeure or the parties' inability to reach agreement.

58. As part of the resolution of any matter submitted to this Court under this Part, the parties by agreement, or this Court, by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay or impediment to performance agreed to by the United States and the appropriate Plaintiff-Intervener or approved by this Court. The Companies shall be liable for stipulated penalties for their failure thereafter to complete the work in accordance with the extended or modified schedule.

XIII. DISPUTE RESOLUTION

59. The dispute resolution procedure provided by this Part shall be available to resolve all disputes arising under this Consent Decree, except as otherwise provided in Part XII (Force Majeure), provided that the party making such application has made a good faith attempt to resolve the matter with the other party.

60. The dispute resolution procedure required herein shall be invoked upon the giving of written notice by one of the parties to this Consent Decree to another advising of a dispute

pursuant to this Part. The notice shall describe the nature of the dispute, and shall state the noticing party's position with regard to such dispute. The party or parties receiving such a notice shall acknowledge receipt of the notice and the parties shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days from the receipt of such notice.

61. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting between representatives of the United States and the appropriate Plaintiff-Intervener and the Companies, unless the parties' representatives agree to shorten or extend this period.

62. In the event that the parties are unable to reach agreement during such informal negotiation period, the United States and the appropriate Plaintiff-Intervener shall provide the Companies with a written summary of its position regarding the dispute. The position advanced by the United States and the appropriate Plaintiff-Intervener shall be considered binding unless, within thirty (30) calendar days of the Companies' receipt of the written summary of the United States and the appropriate Plaintiff-Intervener' position, the Companies file

with this Court a petition which describes the nature of the dispute. In the event that the United States and the appropriate Plaintiff-Intervener are unable to reach agreement with regard to Defendants' claim, the position of the United States shall be the Plaintiffs' final position.

63. In the event that an issue arises that results in any party invoking dispute resolution under this section, which is also subject to dispute resolution under a parallel state agreement the parties agree to resolve such disputes exclusively in this federal forum.

64. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Part may be shortened upon motion of one of the parties to the dispute.

65. Notwithstanding any other provision of this Consent Decree, in dispute resolution, this Court shall not draw any inferences nor establish any presumptions adverse to either party as a result of invocation of this Part or the parties' inability to reach agreement.

66. In resolving the dispute between the parties, the position of the United States and the appropriate Plaintiff-Intervener shall be upheld if supported by substantial evidence in the record.

67. As part of the resolution of any dispute submitted to

dispute resolution, the parties, by agreement, or this Court, by order, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of dispute resolution. The Companies shall be liable for stipulated penalties for their failure thereafter to complete the work in accordance with the extended or modified schedule.

XIV. EFFECT OF SETTLEMENT

68(a). This Consent Decree constitutes full settlement of and shall resolve all civil liability of the Companies to the United States and the Plaintiff-Interveners for the violations alleged in the United States and the Plaintiff-Interveners' Complaints and all civil liability of the Companies occurring prior to lodging of this Consent Decree under the Prevention of Significant Deterioration ("PSD") and Non-Attainment New Source Review requirements at Parts C and D of the Act, and the regulations promulgated thereunder at 40 C.F.R. § 52.21 (the "PSD" rules), and state and local regulations which incorporate and/or implement those rules, for any increase in SO2 and NOX emissions resulting from the Companies' construction, modification, or operation of the process heaters and boilers at the refineries identified in Paragraph 5. During the life of the Consent Decree, these units shall be on a compliance schedule and any modification to these units, as defined in 40 C.F.R. § 52.21,

which is not required by this Consent Decree is beyond the scope of this release.

68(b). NSPS Subpart J. The Company's complete performance of the provisions of Paragraphs 24 and 27 constitutes full settlement of and shall resolve all past civil liability of the Companies to the United States and the Plaintiff-Intervener for those units under NSPS Subpart J, through the date of the demonstrated compliance.

69. This Consent Decree is not a permit; compliance with its terms does not guarantee compliance with any applicable federal, state or local laws or regulations. Nothing in this Consent Decree shall be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

XV. GENERAL PROVISIONS

70. Other Laws. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve the Companies of their obligation to comply with all applicable federal, state and local laws and regulations. Subject to Paragraph 48 (Election of Remedy), nothing contained in this Consent Decree shall be construed to prevent, alter or limit the ability of the United States' and the appropriate Plaintiff-Interveners' rights to seek or obtain other remedies or sanctions

available under other federal, state or local statutes or regulations, by virtue of a Company's violation of this Consent Decree or of the statutes and regulations applicable to violations of this Consent Decree. This shall include the United States' and the appropriate Plaintiff-Interveners' right to invoke the authority of the Court to order the Companies' compliance with this Consent Decree in a subsequent contempt action.

71. Third Parties. This Consent Decree does not limit, enlarge or affect the rights of any party to this Consent Decree as against any third parties.

72. Costs. The United States and the Companies shall each bear their own costs and attorneys' fees. Costs and attorney's fees reimbursable by the Companies to the Plaintiff-Interveners under state law shall be paid for by the Companies as a portion of the civil penalties assessed pursuant to Paragraphs 40 and 41.

73. Public Documents. All information and documents submitted by the Companies to the United States and the appropriate Plaintiff-Intervener pursuant to this Consent Decree shall be subject to public inspection, unless subject to legal privileges or protection or identified and supported as business confidential by the Defendants in accordance with 40 C.F.R. Part 2, or any equivalent state statutes and regulations.

74. Public Comments. The parties agree and acknowledge

that final approval by the United States and the appropriate Plaintiff-Intervener and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. The parties acknowledge and agree that final approval by the State of Louisiana, Department of Environmental Quality, and entry of this Consent Decree is subject to the requirements of La. R.S. 30:2050.7, which provides for public notice of this Consent Decree in newspapers of general circulation and the official journals of parishes in which the Companies' facilities are located, and opportunity for public comment, consideration of any comments, and concurrence by the State Attorney General.

75. Notice. Unless otherwise provided herein, notifications to or communications with the United States and the appropriate Plaintiff-Intervener or the Companies shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested. When the Companies are required to submit notices or communicate in writing under this Consent Decree to EPA relating to one of the refineries identified in Paragraph 5, the Companies shall also submit a copy of that notice or other writing to the Plaintiff-Interveners, for the

refinery located in that state. Except as otherwise provided herein, when written notification or communication is required by this Consent Decree, it shall be addressed as follows:

As to the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611

United States Attorney
Southern District of Texas
c/o U.S. Marshal Service
U.S. Courthouse
515 Rusk
Houston, Texas 77002

As to the U.S. Environmental Protection Agency:

Director
Air Enforcement Division (2242A)
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

With copies to the EPA Regional office where the refinery is located:

EPA Region 3:
Director
Air Protection Division (3AP00)
U.S. Environmental Protection Agency, Region 3
1650 Arch Street
Philadelphia, PA 19103

EPA Region 6:

Chief
Air, Toxics, and Inspection Coordination Branch (6EN-A)

Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202

EPA Region 9:

Director, Air Division (AIR-1)
Attn: Chief, Air Enforcement Office
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

EPA Region 10:
Director
Office of Air Quality
U.S. Environmental Protection Agency, Region 10
1200 6th Avenue
Seattle, WA 98101

As to Equilon and Motiva:

Judy Moorad
Vice President
Safety, Health and Environment
Equiva Services, LLC
12700 Northborough Drive
NAX 300N
Houston, TX 77067-2508

As to DPRLP:

Stacy Methvin, President
Shell Deer Park Refining Company,
A Division of Shell Oil Products Company
5701 Highway 225, North Admin. #245
Deer Park, TX 77536

As to Plaintiff-Intervener the State of Delaware:

Robert J. Taggart
Program Manager
Delaware Department of Natural Resources and
Environmental Control
Division of Air and Waste Management
Engineering and Compliance Branch
715 Grantham Lane

New Castle, Delaware 19720

Kevin Maloney
Deputy Attorney General
Delaware Department of Natural Resources and
Environmental Control
89 Kings Highway
Dover, Delaware 19901

As to Plaintiff-Intervener the State of Louisiana, through the Department of Environmental Quality:

R. Bruce Hammatt
Administrator
Enforcement Division
Office of Environmental Compliance
P.O. Box 82215
Baton Rouge, Louisiana 70884-2215

As to Plaintiff-Intervener the Northwest Air Pollution Authority:

Northwest Air Pollution Authority
1600 South Second Street
Mount Vernon, WA 98273-5202

As to the State of Texas:

Regional Manager
TNRCC - Region 10
3870 Eastex Fwy
Beaumont, TX 7703-1892

Regional Manager
TNRCC - Region 12
5425 Polk Avenue, Suite H
Houston, TX 77023-1486

76. All EPA approvals or comments required under this Decree shall come from EPA, Air Enforcement Division at the address listed in Paragraph 75 (Notice). All Plaintiff-

Intervener approvals shall be sent from the offices identified in Paragraph 75.

77. Any party may change either the notice recipient or the address for providing notices to it by serving all other parties with a notice setting forth such new notice recipient or address.

78. The information required to be maintained or submitted pursuant to this Consent Decree is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 et seq.

79. This Consent Decree shall be binding upon all Parties to this action, and their successors and assigns. The undersigned representative of each Party to this Consent Decree certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to them.

80. Modification. This Consent Decree may be modified only by the written approval of the United States and the appropriate Plaintiff-Intervener and the Companies or by Order of the Court.

81. Continuing Jurisdiction. The Court retains jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, or modification. During the term of this Consent Decree, any party may apply to the Court

for any relief necessary to construe or effectuate this Consent Decree.

82. This Consent Decree constitutes the entire agreement and settlement between the Parties.

XVI. TERMINATION

83. This Consent Decree shall be subject to termination upon motion by the United States, the Plaintiff-Interveners, or the Companies after the Companies satisfy all requirements of this Consent Decree. The requirements for termination include payment of all penalties, including stipulated penalties, that may be due to the United States or the Plaintiff-Interveners under this Consent Decree, installation of control technology systems as specified herein and the performance of all other Consent Decree requirements, the receipt of all permits specified herein, EPA's receipt of the first calendar quarterly progress report following the conclusion of the Companies' operation for at least one year of all units in compliance with the emission limits established herein. At such time, if the Companies believe that they are in compliance with the requirements of this Consent Decree and the permits specified herein, and have paid the civil penalty and any stipulated penalties required by this Consent Decree, then they shall so certify to the United States and the Plaintiff-Interveners, and unless any of the Plaintiffs object in writing with specific reasons within 120 days of

receipt of the certification, the Court shall order that this Consent Decree be terminated on the Companies' motion. If the any Plaintiff objects to the Companies' certification, then the matter shall be submitted to the Court for resolution under Part XIII (Dispute Resolution) of this Consent Decree. In such case, the Companies shall bear the

burden of proving that this Consent Decree should be terminated.

So entered in accordance with the foregoing this_____day of _____, 20__.

_____

United States District Court Judge
for the Southern District of Texas

FOR PLAINTIFF, UNITED STATES OF AMERICA:

_____ Date_____

JOHN CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, DC 20530

_____

Dianne M. Shawley
Senior Counsel
Environment and Natural Resources Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, DC 20005

Mervyn Mosbacker
United States Attorney

By: _____ Date_____

Gordon M. Speights Young
Assistant United States Attorney
Southern District of Texas
P.O. Box 61129
Houston, TX 77208

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____ Date _____

SYLVIA LOWRANCE
Acting Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

FOR PLAINTIFF-INTERVENER the STATE OF DELAWARE:

_____ Date _____

Nicholas A. DiPasquale,
Secretary,
Department of Natural Resources and
Environmental Control
715 Grantham Lane
New Castle, Delaware 19720

_____ Date _____

Kevin Maloney,
Deputy Attorney General
Delaware Department of Natural Resources and
Environmental Control
89 Kings Highway
Dover, Delaware 19901

PRELIMINARY APPROVAL OF PLAINTIFF-INTERVENER, THE STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF ENVIRONMENTAL QUALITY:

_____ Date _____

LINDA KORN LEVY
Assistant Secretary
Office of Environmental Compliance
Louisiana Department of Environmental Quality

_____ Date _____

JOHN B. KING
Chief Attorney
Legal Division
Louisiana Department of Environmental Quality
P.O. Box 82282
Baton Rouge, Louisiana 70884-2282

For Northwest Air Pollution Authority, A Washington Municipal Corporation:

By : _____

Laughlan H. Clark
Visser, Zender and Thurston, P.S.
1700 D Street
P.O. Box 5226
Bellingham, WA 98227