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18  
 19 UNITED STATES DISTRICT COURT  
 20 CENTRAL DISTRICT OF CALIFORNIA

CV05-7358

21 UNITED STATES OF AMERICA, )

CIVIL NO.

22 Plaintiff, )

23 v. )

CONSENT DECREE

24 ARCO TERMINAL SERVICES CORP., )

25 Defendant. )

26 DOCKETED ON CM

27 DEC 9 2005

28 BY *[Signature]* 021

SEND  
 FILED  
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1 WHEREAS Plaintiff the United States of America on behalf of the United  
2 States Environmental Protection Agency (the "United States") has filed a civil  
3 action against ARCO Terminal Services Corporation (hereinafter "ATSC"),  
4 identified by Case Number \_\_\_\_\_;  
5  
6

7 WHEREAS the United States alleged that, on at least 294 occasions  
8 between February 11, 1995 and May 16, 2002, ATSC loaded vessels with "organic  
9 liquids" as defined by South Coast Air Quality Management District  
10 ("SCAQMD") Rule 1142 as approved by EPA on December 13, 1994 and  
11 incorporated into the California State Implementation Plan ("Rule 1142") at its  
12 marine terminal at Pier B (Berths 76, 77, and 78) at the Port of Long Beach  
13 ("Marine Terminal") in violation of the requirements of Rule 1142;  
14  
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17  
18 WHEREAS the United States and Defendant ATSC have reached a  
19 settlement on the violations identified in the complaint;  
20

21 WHEREAS the parties have agreed that settlement of the civil claims  
22 alleged in the complaint is in the public interest and that entry of this Consent  
23 Decree without further litigation is the most appropriate way to resolve the  
24 allegations in the complaint;  
25  
26

27 WHEREAS ATSC denies the material allegations of the complaints, and  
28





1           5.     Payments under this Consent Decree shall be made by Electronic  
2  
3 Fund Transfer ("EFT") to the U.S. Treasury according to current United States  
4 EFT procedures. Prior to making any payments, ATSC shall request current EFT  
5 procedures from the Financial Litigation Unit of the U.S. Attorney's Office for the  
6 Central District of California. Concurrently with the electronic funds transfer,  
7 ATSC shall fax notice of payment to the person designated as "Point of Contact"  
8 on the EFT transfer instructions, and shall send notice of payment to EPA and the  
9 United States Department of Justice ("DOJ") at the addresses listed in Section IX  
10 (Notification). The notice of payment shall identify: (1) the date and amount of  
11 money transferred; (2) the name and address of the transferring bank; (3) this case  
12 by name; (4) the civil action number; (5) USAO File # 1999-VO-2775;  
13 (6) DOJ # 90-5-2-1-06559; (7) this Consent Decree (including date of entry); and  
14 (8) a description of the reason for the payment (including the paragraph number of  
15 this Consent Decree that is most relevant to the payment).  
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### 22           III.    SUPPLEMENTAL ENVIRONMENTAL PROJECT

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24           6.     ATSC shall implement the ATSC Supplemental Environmental  
25 Project ("ATSC SEP"), in accordance with the terms and schedules set out in this  
26 Consent Decree and in Attachment I which is attached to, incorporated into, and  
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1 fully enforceable under, this Consent Decree. The ATSC SEP shall be completed  
2 within THREE (3) years after entry of this Consent Decree, or at another time  
3 mutually agreed upon by ATSC and EPA. The ATSC SEP involves the  
4 elimination of substantial amounts of harmful air emissions from diesel fueled  
5 vehicles and equipment through the completion of discrete projects meeting the  
6 criteria identified in Attachment 1, Paragraph 2. The ATSC SEP is intended to  
7 yield significant environmental or public health benefits and the anticipated  
8 emission reductions go beyond the requirements of existing law. In implementing  
9 the ATSC SEP, ATSC shall spend a total of not less than SIX HUNDRED  
10 SEVENTY-FIVE THOUSAND DOLLARS (\$675,000) in eligible ATSC SEP  
11 costs as well as any and all escrow interest accrued. Eligible ATSC SEP costs are  
12 defined in Paragraph 2 of Attachment 1 and include the costs of planning and  
13 implementing the ATSC SEP, but do not include ATSC's overhead, additional  
14 employee time and salary, administrative expenses, legal fees, and contractor  
15 oversight.

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23 7. ATSC is responsible for the satisfactory completion of the ATSC SEP  
24 in accordance with the requirements of this Consent Decree. To have  
25 satisfactorily completed the ATSC SEP, ATSC shall have fully funded and  
26 ensured completion of the ATSC SEP in accordance with this Consent Decree and  
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1 Attachment 1 hereto. "Fully fund" means establishing interest-bearing escrow  
2 accounts in the amounts specified for the ATSC SEP according to the  
3 requirements of this Consent Decree and Attachment 1 hereto.  
4

5  
6 8. With regard to the ATSC SEP, ATSC certifies the truth and accuracy  
7 of each of the following:  
8

9 (a) That, as of the date of executing this Consent Decree, ATSC is  
10 not required to perform or develop the ATSC SEP by any federal, state, or local  
11 law or regulation, nor is ATSC required to perform or develop the ATSC SEP by  
12 agreement, grant, or as injunctive relief awarded in any other action in any forum;  
13  
14

15 (b) That the ATSC SEP is not a project that ATSC was planning or  
16 intending to construct, perform, or implement other than in settlement of the  
17 claims resolved in this Consent Decree;  
18

19 (c) That ATSC has not received, and is not negotiating to receive,  
20 credit for the ATSC SEP in any other enforcement action;  
21  
22

23 (d) That ATSC will not receive any reimbursement for any portion  
24 of the ATSC SEP from any other person; and  
25

26 (e) ATSC also agrees that any emissions reductions resulting from  
27 projects required by this Section shall be for the benefit of the environment only  
28

1 and ATSC shall not bank, claim, transfer, or in any way use any emission  
2 reductions that result from them in connection with any emissions reduction  
3 trading or permitting program under the California SIP or any other applicable  
4 regulatory program under the Clean Air Act.  
5  
6

7 9. SEP Quarterly Reports - Within THIRTY (30) days after the end of  
8 each calendar-year quarter (i.e., by April 30, July 30, October 30, and January 30)  
9 after lodging of this Consent Decree, until termination of this Consent Decree  
10 pursuant to Paragraph 55, ATSC shall submit by overnight delivery or certified  
11 mail a quarterly report for the preceding quarter that shall contain the following:  
12  
13

14 (a) a narrative description of the activities undertaken on the  
15 ATSC SEP to date;  
16

17 (b) an itemization, with copies of supporting documentation, of the  
18 deposits made to each escrow account established for the respective ATSC SEP  
19 and/or of the costs expended or authorized by ATSC to be expended on the ATSC  
20 SEP (including the expenditure or authorization for expenditure dates and a  
21 remaining balance of account) during that quarterly period;  
22  
23

24 (c) a financial balance sheet for the escrow account identifying all  
25 debits to the account, deposits made to the account, accrued interest, the current  
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1 balance of the account; and

2  
3 (d) an explanation of any difficulties or delays in the  
4 implementation of the ATSC SEP including compliance with any schedules or  
5 milestones established by the California Air Resources Board ("CARB") or  
6 Gateway Cities' Program ("Gateway").  
7

8  
9 ATSC shall continue to submit SEP-related information in the quarterly reports to  
10 EPA until the ATSC SEP is certified complete under Paragraph 10 of this Consent  
11 Decree or within SIXTY (60) days after three years from entry of the Consent  
12 Decree, whichever is earlier.  
13

14  
15 10. SEP Completion Report - A separate SEP Completion Report will be  
16 issued by ATSC covering all the projects overseen by CARB and by Gateway,  
17 respectively, within SIXTY (60) days of these organizations completing their  
18 portion of the ATSC SEP. The SEP Completion Reports shall each contain the  
19 following information:  
20

- 21  
22 (a) A description of the ATSC SEP as implemented;  
23  
24 (b) A description of any problems encountered in completing the  
25 ATSC SEP and the solutions thereto;  
26  
27 (c) Certification that the ATSC SEP has been fully implemented  
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1 pursuant to the provisions of this Consent Decree;

2  
3 (d) A description of the environmental and public health benefits  
4 resulting from implementation of the ATSC SEP (with a quantification of the  
5 benefits and pollutant reductions, if feasible).  
6

7 (e) An itemized list and description of all eligible ATSC SEP  
8 costs; and  
9

10 (f) For all eligible ATSC SEP costs, itemized copies of purchase  
11 orders and receipts or canceled checks as well as a certified statement that ATSC  
12 has not, and will not, use any ATSC SEP costs as, or in furtherance of, a tax  
13 deduction for ATSC, or any of its corporate affiliates, under federal, state or local  
14 law.  
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18 11. EPA may, in its sole discretion, require information by issuing an  
19 information request pursuant to 42 U.S.C. § 7414, in addition to that described in  
20 the preceding Paragraph, in order to determine the adequacy of SEP completion or  
21 eligibility of SEP costs.  
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24 12. Following receipt of each SEP Completion Report, EPA will do one  
25 of the following:  
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1 (a) provide written notice that it accepts the SEP Completion  
2 Report;  
3

4 (b) reject the SEP Completion Report and provide written notice to  
5  
6 ATSC of any deficiencies, and grant ATSC an additional THIRTY (30) days, and  
7 such other additional time as EPA may in its sole and unreviewable discretion  
8  
9 conclude is reasonable, in which to correct any deficiencies; or

10 (c) reject the SEP Completion Report and provide written notice to  
11  
12 ATSC of its failure to satisfactorily complete the ATSC SEP in accordance with  
13 the requirements of this Consent Decree, and seek stipulated penalties as specified  
14  
15 in the Consent Decree.

16 13. ATSC shall maintain, for a period of one year after EPA accepts the  
17  
18 SEP Completion Report, legible copies of documentation of the underlying  
19  
20 research and data for any and all documents or reports submitted to EPA regarding  
21  
22 the ATSC SEP, and ATSC shall provide the documentation of any such  
23  
24 underlying research and data to EPA within FOURTEEN (14) days of a request  
25  
26 for such information.

27 14. Application of any control technologies or ULSD in implementing  
28  
the ATSC SEP shall not be construed as an endorsement or approval by EPA of

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1 any particular brand of such product or technology. Also, the involvement of any  
2 third party in the implementation of the ATSC SEP is not intended nor shall it be  
3 construed as a specific endorsement or approval by EPA of such third party or of  
4 any product or service provided by such third party.  
5  
6

7 15. For all certifications ATSC is required to make under Paragraphs 9  
8 and 10 of the Consent Decree relating to the performance and completion of the  
9 ATSC SEP, ATSC may place reasonable reliance on the accuracy of reports or  
10 other written information authored by EPA, CARB or Gateway.  
11  
12

13 16. Disputes concerning the satisfactory performance of the ATSC SEP  
14 and the amount of eligible ATSC SEP costs may be resolved under Section VIII of  
15 this Consent Decree (Dispute Resolution). No other disputes arising under this  
16 Section shall be subject to Dispute Resolution.  
17  
18

19 17. Any public statement, oral or written, in print, film, or other media,  
20 made by ATSC making reference to the ATSC SEP under this Consent Decree  
21 shall include the following language, "This project was undertaken in connection  
22 with the settlement of an enforcement action, United States v. ATSC, taken on  
23 behalf of the U.S. Environmental Protection Agency resolving allegations that  
24 ATSC violated the federal Clean Air Act."  
25  
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1 18. If a force majeure event prevents ATSC from performing or ensuring  
2 the performance of a portion of the ATSC SEP without expending all of the funds  
3 designated for the ATSC SEP's implementation in Attachment 1, ATSC shall  
4 notify EPA in accordance with Section IX of the Consent Decree. Upon EPA's  
5 agreement that the ATSC SEP cannot be satisfactorily completed, ATSC shall halt  
6 work on the ATSC SEP, compute the amount of any funds (including accrued  
7 interest) designated for the ATSC SEP that have not been spent and, after  
8 obtaining agreement from EPA, direct such funds to another of the projects  
9 described in the Consent Decree and Attachment 1, as applicable.  
10  
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14 19. Each report submitted by ATSC under this Section shall be signed by  
15 a duly authorized ATSC official in accordance with Section IX of this Consent  
16 Decree. This certification requirement does not apply to emergency or similar  
17 notifications where compliance would be impractical.  
18  
19

#### 20 IV. INJUNCTIVE RELIEF

21  
22 20. Until the termination of this Consent Decree, ATSC shall not conduct  
23 any loading, lightering or housekeeping event, as defined in Rule 1142, at its  
24 Marine Terminal without reducing emissions of volatile organic compounds  
25 ("VOC") by at least 95 percent by weight from uncontrolled conditions; provided,  
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27  
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1 however, that if a source test performed to determine the control efficiency of  
2 ATSC's VOC control equipment while loading a particular type of petroleum  
3 product shows that controlled emissions are less than 2 pounds per 1000 barrels of  
4 product loaded, then the reduction in VOC emissions for that particular product  
5 may be less than 95 percent. Regardless of the level of uncontrolled emissions or  
6 the type of petroleum product or petroleum product vapor involved in the loading,  
7 lightering or housekeeping event, ATSC must control emissions during all  
8 loading, lightering or housekeeping events at its Marine Terminal through the use  
9 of a permitted control device operated consistent with good pollution control  
10 practice for minimizing emissions.  
11  
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16 21. ATSC shall notify the United States within TEN (10) days of receipt  
17 of information that the control technology required pursuant to Paragraph 20 is not  
18 being used by it or a third party at its Marine Terminal. ATSC will be subject to  
19 stipulated penalties for such a failure under Paragraph 29. ATSC shall also  
20 include this notification in its quarterly reports.  
21  
22

23 22. ATSC shall not avoid the requirements of this Consent Decree or the  
24 requirements of Rule 1142 for the control of VOC emissions during housekeeping  
25 events by sending vessels that have been unloaded at the Marine Terminal  
26 elsewhere for the purpose of gas-freeing or venting the cargo holds without the  
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1 use of VOC emission controls.

2  
3 23. Initial Report - ATSC shall submit an initial report to EPA within  
4 THIRTY (30) days of the effective date of this Consent Decree describing how it  
5 will comply with the requirements of Paragraph 20 by describing the type and  
6 manufacturer of the control device, how it will verify on an ongoing basis the  
7 control efficiency of the device, and procedures for ensuring that every loading,  
8 lightering or housekeeping event occurring at its Marine Terminal will be  
9 controlled.  
10  
11

12  
13 24. ATSC shall operate any and all control devices used to comply with  
14 Section IV of this Consent Decree pursuant to and consistent with conditions set  
15 forth in a permit to operate issued by SCAQMD which covers the use of such  
16 devices.  
17  
18

19 25. Change of Emission Controls System - If at any point ATSC changes  
20 its emission control system or adds additional controls, ATSC shall obtain from  
21 SCAQMD a new or modified ATC and/or PTO covering the new controls prior to  
22 commencing operation of the new controls. ATSC shall submit a notification to  
23 U.S. EPA at the same time it submits the permit application to SCAQMD  
24 providing notice of such change and/or addition of the new controls, identification  
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