

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES of AMERICA,)
)
 Plaintiff,)
 and)
 THE STATE OF DELAWARE and)
 THE STATE OF LOUISIANA)
)
 Plaintiff-Interveners,)
)
 v.)
)
 MOTIVA ENTERPRISES LLC,)
 Defendant.)
 _____)

Civil Action
4:01cv978
Honorable Melinda Harmon

FIFTH ADDENDUM TO CONSENT DECREE

WHEREAS, the United States of America (hereinafter “the United States”), the State of Delaware, the State of Louisiana, and Motiva Enterprises LLC (hereinafter “Motiva”) are parties to a Consent Decree entered by this Court on August 20, 2001; and

WHEREAS, on June 17, 2004, this Court entered a modification to the Consent Decree to reflect the sale of the Delaware City refinery located in Delaware City, Delaware, to The Premcor Refining Group Inc. (“Premcor”); and

WHEREAS, on September 1, 2005, Valero acquired Premcor and its subsidiaries in a merger of Premcor with and into Valero, with Valero being the surviving corporation of the merger and the ultimate parent of Premcor (“Valero (Premcor)”), which included acquisition of the Delaware City refinery; and

WHEREAS, on June 1, 2010, Delaware City Refining Company LLC (“DCRC”) purchased the Delaware City refinery from Valero (Premcor); and

WHEREAS, DCRC contractually agreed to assume certain rights, obligations and benefits, and has agreed to be bound by certain terms and conditions of the Consent Decree as it relates to the Delaware City refinery, as provided in this Fifth Addendum; and

WHEREAS, DCRC represents that it has the financial and technical ability to assume the obligations of the Consent Decree as it relates to the Delaware City refinery; and

WHEREAS, Paragraph 220 of the Consent Decree, as amended, provides that modifications to this Consent Decree with respect to the Delaware City refinery shall be in writing, signed by Valero (Premcor), the U.S. Environmental Protection Agency, the Department of Justice and the State of Delaware and filed with the Court;

NOW, THEREFORE, it is Ordered, Adjudged and Decreed that:

1. Effective June 1, 2010, DCRC assumes all responsibility for the obligations and liabilities of, secures the rights and benefits of, and shall be substituted for, Valero (Premcor) under the Consent Decree as it relates to the Delaware City refinery, in accordance with the provisions of this Fifth Addendum.
2. Upon entry by the Court of this Fifth Addendum, Valero (Premcor) is released from its obligations and liabilities on and after June 1, 2010, but retains all rights and benefits under this Consent Decree as it relates to the Delaware City refinery; except, however, Valero (Premcor) shall retain all obligations for any penalties for violations at the Delaware City refinery arising after April 30, 2004 and prior to June 1, 2010.

3. Except as otherwise provided herein, effective on the Date of Entry of this Fifth Addendum, DCRC shall be substituted for Valero (Premcor) for all provisions of the Consent Decree as it relates to the Delaware City refinery where Valero (Premcor)'s name appears in the Consent Decree.

4. Notwithstanding the provisions of Paragraph 3 of this Fifth Addendum, DCRC shall not be responsible for penalties under the Consent Decree related to the Delaware City refinery arising prior to June 1, 2010, nor for any violations at the Delaware City refinery arising prior to June 1, 2010; except, however, DCRC shall be responsible for any injunctive relief required to be performed or completed on and after June 1, 2010 to correct violations arising prior to and/or continuing past June 1, 2010.

5. Nothing in this Fifth Addendum affects the provisions of the Consent Decree relative to the Norco, Convent and Port Arthur refineries. In no event shall DCRC bear any liability under the Consent Decree relative to the Norco, Convent and Port Arthur refineries.

6. Paragraph 4 of the Consent Decree is amended to read as follows:

“4. Motiva operates three (3), and DCRC one (1), petroleum refinery covered by the Consent Decree for the manufacture of various petroleum-based products, including gasoline, diesel and jet fuels, and other marketable petroleum by-products.”

7. Paragraph 5 of the Consent Decree is amended to read as follows:

“5. Covered Refineries.

- (a) Motiva owns and operates refineries located as follows:
Norco, Louisiana
Convent, Louisiana
Port Arthur, Texas
- (b) DCRC owns and operates a refinery located in Delaware City, Delaware.”

8. Valero (Premcor) and/or Motiva have reported that the obligations set forth in Section IV, “Reductions of NO_x Emissions from Fluidized Catalytic Cracking Units (“FCCUs”) and Fluid Coker Unit (“FCU”),” and Section V, “Reductions of SO₂ Emissions from FCCUs and FCU,” have been fully satisfied by Motiva and/or Valero (Premcor) as they apply to the Delaware City refinery, and have further reported that no further action is required by Motiva, Valero (Premcor) or DCRC with respect to these provisions.

9. Valero (Premcor) and/or Motiva have reported that the obligations set forth in Paragraphs 60 and 61 (“Benzene Waste NESHAP”) of the Consent Decree have been fully satisfied by Motiva and/or Valero (Premcor) as they apply to the Delaware City refinery, and have further reported that no further action is required by Motiva, Valero (Premcor) or DCRC with respect to these provisions.

10. Valero (Premcor) has reported that it conducted a laboratory audit for the Delaware City refinery, as required by Paragraph 76, on May 29, 2009. Therefore,

pursuant to Paragraph 76, DCRC is obligated to conduct a laboratory audit for the Delaware City refinery on or before May 29, 2011, and every two years thereafter.

11. Valero (Premcor) and/or Motiva have reported that the obligations set forth in Paragraph 110 (certification of audit) of the Consent Decree have been fully satisfied by Motiva and/or Valero (Premcor) as they apply to the Delaware City refinery, and have further reported that no further action is required by Motiva, Valero (Premcor) or DCRC with respect to these provisions.

12. Valero (Premcor) has reported that it has completed an external audit of the LDAR program at the Delaware City refinery, as required by Paragraph 112, on April 16, 2010. Therefore, DCRC shall be required to conduct the next external audit of Delaware City refinery's LDAR program pursuant to Paragraph 112 on or before April 16, 2014, and every four years thereafter.

13. Valero (Premcor) and/or Motiva have reported that the obligations set forth in Section IX ("Permitting") of the Consent Decree have been fully satisfied by Motiva and/or Valero (Premcor) as they apply to the Delaware City refinery, and have further reported that no further action is required by Motiva, Valero (Premcor) or DCRC with respect to these provisions.

14. Paragraph 207 of the Consent Decree shall be replaced by the following:

“207. During the life of this Consent Decree, the units described in Paragraph 206 shall be on a compliance schedule. To the extent that Motiva, Valero (Premcor) or DCRC, as applicable, satisfies such compliance schedule identified in this Consent Decree, the releases of liability set forth in Paragraphs 204 through 206 shall extend to Motiva, Valero (Premcor) or DCRC, as applicable, through the time of Motiva’s, Valero’s (Premcor’s) or DCRC’s satisfactory completion of the applicable compliance schedule; provided however that, 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. This Paragraph does not affect any releases in Paragraphs 204 through 206.”

15. Paragraph 215 of the Consent Decree is amended to substitute DCRC for Premcor, and shall read as follows:

“As to DCRC:

Jim Fedena
Senior Vice President, EHS
Delaware City Refining Company, LLC
1 Sylvan Way, 2nd Floor
Parsippany, NJ 07054

and

Jeffrey Dill, Esquire
Delaware City Refining Company, LLC
1 Sylvan Way, 2nd Floor
Parsippany, NJ 07054

SO ORDERED this _____ day of _____, 2013.

Melinda Harmon
United States District Court Judge
Southern District of Texas

WE HEREBY CONSENT to the entry of the Fifth Addendum to Consent Decree entered in the matter of *United States, et al. v. Motiva Enterprises LLC, et al.*, Civil No. H-01-0978, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: _____

7/25/13


ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

7/15/13


ROBERT D. BROOK
Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

July 10, 2013


JOHN FOGARTY
Special Appointment as a Department of Justice
Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

JOSÉ ANGEL MORENO
United States Attorney
Southern District of Texas

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FOR DEFENDANT DELAWARE CITY
REFINING COMPANY, LLC:

Date: 06-21-2013



HEATHER CHELPATY
Vice President, HSE
Delaware City Refining Company, LLC
1 Sylvan Way, 2nd Floor
Parsippany, NJ 07054

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FOR DEFENDANT VALERO ENERGY
CORPORATION:

Date: _____

07/02/2013



KIRK SAFFELL
Vice President of Health, Safety and Environmental
Valero Energy Corporation
One Valero Way
San Antonio, Texas 78249

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FOR PLAINTIFF THE STATE OF DELAWARE:

Date: _____

7/17/13


COLLIN P. O'MARA
Secretary
Department of Natural Resources and
Environmental Control
89 Kings Highway
Dover, Delaware 19901

Date: _____

7/17/13


VALERIE SATTERFIELD EDGE
Deputy Attorney General
Office of the Attorney General
102 West Water Street, Third Floor
Dover, Delaware 19904

CERTIFICATE OF SERVICE

I hereby certify that this July 29, 2013, a copy of this Fifth Addendum to Consent Decree was filed with the Clerk of the U.S. District Court for the Southern District of Texas using the Courts' CM/ECF system, and was served first class via U.S. Mail upon:

Kirk Saffell
Vice President of Health, Safety and Environmental
Valero Energy Corporation
One Valero Way
San Antonio, Texas 78249

Heather Chelpaty
Vice President, HSE
Delaware City Refining Company, LLC
1 Sylvan Way, 2nd Floor
Parsippany, NJ 07054

/s/ Robert Brook
Robert Brook