

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TESORO CORPORATION, et al.,

Defendants.

Civil Action No. 1:10-cv-00211 (JEB)

CONSENT DECREE

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	2
II.	APPLICABILITY	2
III.	OBJECTIVES	3
IV.	DEFINITIONS	4
V.	CIVIL PENALTY	6
VI.	COMPLIANCE REQUIREMENTS	7
VII.	STIPULATED PENALTIES	8
VIII.	FORCE MAJEURE	12
IX.	DISPUTE RESOLUTION	14
X.	INFORMATION COLLECTION AND RETENTION	17
XI.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	18
XII.	COSTS	20
XIII.	NOTICES	20
XIV.	EFFECTIVE DATE	23
XV.	RETENTION OF JURISDICTION	23
XVI.	MODIFICATION	23
XVII.	TERMINATION	25
XVIII.	PUBLIC PARTICIPATION	26
XIX.	SIGNATORIES/SERVICE	27
XX.	INTEGRATION	27
XXI.	FINAL JUDGMENT	28
XXII.	APPENDICES	28

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint on February 5, 2010, a First Amended Complaint on June 3, 2010, and a Second Amended Complaint February 8, 2011. In the Second Amended Complaint, the United States alleges that Defendants Tesoro Corporation, Tesoro Refining and Marketing Company, and Tesoro Alaska Company violated Clean Air Act (“CAA”), Title II, Section 211(b), (c), (d), and (k), 42 U.S.C. § 7545(b), (c), (d), & (k), and the regulations promulgated thereunder published at 40 C.F.R. Part 80.

The Second Amended Complaint against Defendants alleges that Defendants owned and operated refineries producing conventional gasoline located in Salt Lake City, Utah (“the Salt Lake City Refinery”); Mandan, North Dakota (“the Mandan Refinery”); Anacortes, Washington (“the Anacortes Refinery”), and Kenai, Alaska (“the Kenai Refinery”). The Second Amended Complaint further alleges that Tesoro Corporation owned and operated an Import Facility in Martinez, California (“PADD 5”). The Second Amended Complaint alleges that Defendants are liable for civil penalties and injunctive relief for violations of regulations at 40 C.F.R. Part 80. The violations specifically alleged in the Second Amended Complaint occurred at various times on or before February 27, 2007.

Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint, the First Amended Complaint, or the Second Amended Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, will avoid litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and CAA Sections 205(b) and 211(d), 42 U.S.C. §§ 7524(b) and 7545(d) and over the Parties. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), 1395(a), and Section 205(b) of the Act, 42 U.S.C. § 7524(b), because the EPA Administrator's principal place of business is located in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action to enforce this Decree, and Defendants consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to CAA Sections 211(b), (c), (d), and (k), 42 U.S.C. §§ 7545(b), (c), (d), and (k), and the regulations promulgated thereunder published at 40 C.F.R. Part 80.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and upon each Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfers of ownership or operation of any of Defendants' Refineries that are subject to the requirements of the Tesoro System-Wide Compliance Plan and Audit Requirements (Appendix A), whether in compliance with the procedures of this Paragraph or

otherwise, shall relieve Tesoro of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Tesoro shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA and the United States Department of Justice, in accordance with Section XIII of this Decree (Notices). Any attempt to transfer ownership or operation of any of Defendants' Refineries that are subject to the requirements of the Tesoro System-Wide Compliance Plan and Audit Requirements (Appendix A) without complying with this Paragraph constitutes a violation of this Decree.

5. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties include compliance with the terms of Appendix A of this Consent Decree in a supervisory capacity, as well as to any contractor retained to perform work required under this the terms of Appendix A of this Consent Decree. Defendants shall condition any such contract for work required under the Consent Decree upon performance of such work in conformity with the terms herein.

6. Except as set forth in Section VIII herein, in any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

7. The objectives of this Consent Decree are to:

a. Implement the injunctive relief at the Tesoro Refineries to facilitate and maintain compliance with the requirements of 40 C.F.R. Part 80, and

b. Resolve the civil claims of the United States as provided in Section XI (Effect of Settlement/Reservation of Rights).

IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CAA or in regulations promulgated pursuant to the CAA shall have the meanings assigned to them in the CAA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. “Anacortes Refinery” shall mean the refinery owned and/or operated by Tesoro located in Anacortes, Washington.

b. “CAA” means the Clean Air Act, 42 U.S.C. § 7401 et seq.

c. “Consent Decree” or “Decree” shall mean this Decree, including all Appendices attached hereto (listed in Section XXII);

d. “Date of Lodging” means the day on which this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the District of Columbia before solicitation of public comment as described in Section XVIII.

e. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

f. “Defendants” or “Tesoro” shall mean Tesoro Corporation, Tesoro Refining & Marketing Company LLC, and Tesoro Alaska Company. Defendant Tesoro Refining & Marketing Company LLC, a Delaware limited liability company, is the

successor-in-interest to Tesoro Refining and Marketing Company, a Delaware corporation, Defendant Tesoro Refining & Marketing Company LLC succeeded to all of the rights, obligations, and liabilities of Tesoro Refining and Marketing Company.

g. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

h. “Effective Date” shall have the definition provided in Section XIV;

i. “Kenai Refinery” shall mean the refinery owned and/or operated by Tesoro located in Kenai, Alaska;

j. “Mandan Refinery” shall mean the refinery owned and/or operated by Tesoro located in Mandan, North Dakota;

k. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral;

l. “Parties” shall mean the United States and Tesoro;

m. “Section” shall mean a portion of this Decree identified by a roman numeral;

n. “Salt Lake City Refinery” shall mean the refinery owned and/or operated by Tesoro located in Salt Lake City, Utah;

o. “Tesoro Refineries” shall mean the refineries owned and/or operated by Defendants located in Salt Lake City, Utah (“the Salt Lake City Refinery”); Mandan, North Dakota (“the Mandan Refinery”); Anacortes, Washington (“the Anacortes Refinery”), and Kenai, Alaska (“the Kenai Refinery”);

p. “Tesoro System-Wide Compliance Plan and Audit Requirements” means the document attached as Appendix A.

q. “United States” shall mean the United States of America, acting on behalf of EPA.

V. CIVIL PENALTY

9. Within 30 Days after the Effective Date of this Consent Decree, Defendants shall pay the sum of \$1,100,000 as a civil penalty together with interest, accruing from the date payment is due until the date payment is made at the rate specified in 28 U.S.C. § 1961.

10. Defendants shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendants, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Columbia, Judiciary Center Building, 555 Fourth Street, NW Washington, DC 20530, (202) 514-7566. At the time of payment, Defendants shall send a copy of the EFT authorization form, the EFT transaction record, and a transmittal letter stating that the payment is for the civil penalty owed pursuant to the Consent Decree in U.S. v. Tesoro Corp., Civil No. 1:10-cv-00211 (JEB) (D.D.C.), and referencing DOJ case number 90-5-2-1-09622 to the United States in accordance with Section XIV of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

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

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

VI. COMPLIANCE REQUIREMENTS

12. Defendants shall implement the Tesoro System-Wide Compliance Plan and Audit Requirements attached here to as Appendix A.

13. Approval of Deliverables. Defendants shall submit any plan, report, or other item that it is required to submit for approval pursuant to this Consent Decree to EPA. EPA may approve the submission or decline to approve it and provide to Defendants written comments. Within 45 Days of receiving EPA's written comments, Defendants shall either: (i) alter the submission consistent with EPA's written comments and provide the submission to EPA for final approval, or (ii) meet and confer with EPA; or (iii) submit the matter for dispute resolution under Section IX of this Decree. If Defendants elects option (ii) (meet and confer with EPA), they must elect either option (i) or (iii) within two weeks of the date EPA and Defendants meet and confer.

14. Within 30 Days of either (a) receipt of EPA's final approval of the submission, or (b) upon completion of the submission pursuant to dispute resolution, Defendants shall start to implement the submission in accordance with any schedule in the approved submission.

15. Any stipulated penalties applicable to the original submission, as provided in Section VII of this Decree, shall accrue during the 45-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission. A determination as to whether Tesoro's original submission was so deficient as to constitute a

material breach of Defendants' obligations under this Decree is subject to the Dispute Resolution provisions in Section IX.

16. If a resubmitted plan, report, or other item (or portion thereof), is disapproved in whole or in part, EPA may again require Defendants to correct any deficiencies, in accordance with the preceding Paragraphs, or may themselves correct any deficiencies, subject to Defendants' right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

17. Permits. Where any compliance obligation under this Section requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section VIII of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

18. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

19. Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform the obligations required by Sections V (Civil

Penalty) and VI (Compliance Requirements) of this Decree, including the requirements of any work plan or schedule, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

20. Late Payment of Civil Penalty: If Defendants fail to pay the civil penalty required to be paid under Section V of this Decree (Civil Penalty) when due, Defendants shall pay a stipulated penalty of \$1000 per Day for each Day that the payment is late.

21. If Defendants fail to timely comply with any of the requirements to which this paragraph is applicable, the following stipulated penalties shall accrue per violation per Day for each violation:

Failure to Implement Tesoro System-Wide Compliance Plan and Audit Requirements	
Period of Noncompliance	Penalty per Violation per Day
1st through 14th day	\$1,000
15th through 30th day	\$5,000
31st day and beyond	\$10,000

This Paragraph applies to the following requirements of the Tesoro System-Wide Compliance Plan and Audit Requirements (Appendix A):

- a. Requirement to prepare and implement the System Wide Compliance Plan (Section I);
- b. Requirement to provide EPA upon a request a copy of any checklists, reports or materials generated as a result of implementation and compliance with the procedures of ASTM D6792-07 (Section I(C));

- c. Requirement to provide EPA upon a request a copy of any test data, reports or materials generated as a result of implementation and compliance with the procedures of the RFG Crosscheck Program (Section I(D));
- d. Requirement to submit to EPA for approval the name of a qualified independent auditing firm(s) (Section II(A));
- e. Requirement to complete the onsite portion of all audits by auditing firm(s) approved by EPA, including EPA being given the notification to participate in the onsite portion of all audits as observers (Section II(A));
- f. Requirement to send to EPA a copy of the Audit Report for each facility (Section II(B));
- g. Requirement to send to EPA a copy of any required Action Plans to EPA (Section II(C));
- h. Requirement to implement any required Action Plans according to the schedule specified therein (Section II(C)); and
- i. Requirement to conduct any required final Audit in order to verify full implementation of the Action Plan(s) and send to EPA a copy of the result to EPA (Section II(C)).

22. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

23. Defendants shall pay any stipulated penalty within 60 Days of receiving the United States' written demand.

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

25. Stipulated penalties shall continue to accrue as provided in Paragraph 22, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subParagraph c, below.

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

26. Defendants shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

27. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

28. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendants' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the requirements of Clean Air Act Section 211, 42 U.S.C. § 7545, and its implementing regulations, including 40 C.F.R. Part 80, Defendants shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

29. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the

greatest extent possible. “Force majeure” does not include Defendants’ financial inability to perform any obligation under this Consent Decree.

30. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall provide notice orally or by electronic or facsimile transmission to the EPA Attorney Advisor listed in Section XIII (Notices), within 72 hours of when Defendants first knew that the event might cause a delay. Within 7 Days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants’ rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants’ contractors knew or should have known.

31. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those

obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

32. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.

33. If Defendants elect to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 29 and 30, above. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

34. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from challenging the applicability of the

requirements of the undisputed item as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

35. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the final position advanced by the United States shall be considered binding unless, within 45 Days after the conclusion of the informal negotiation period, Defendants invokes formal Dispute Resolution procedures as set forth below.

36. Formal Dispute Resolution. Defendants shall invoke formal Dispute Resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

37. The United States shall serve its Statement of Position within 45 Days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants files a motion for judicial review of the dispute in accordance with the following Paragraph.

38. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

40. Standard of Review. In any dispute brought under Paragraph 36, the Court shall apply the standard of review provided by applicable law. Defendants shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the Objectives of the Consent Decree.

41. The invocation of Dispute Resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 25. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

42. Upon request, Defendants shall provide EPA or their authorized representatives splits of any samples taken by Defendants. Upon request, EPA shall provide Defendants splits of any samples taken by EPA.

43. In addition to any recordkeeping requirements applicable to Tesoro under any federal or state statutes or regulations, until two years after the termination of this Consent Decree, Defendants shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

44. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States at least 90 Days prior to the termination of the information-retention period and, upon request by the United States, Defendants shall deliver requested documents, records, or other information to EPA. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document,

record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

45. Defendants may also assert that information required to be provided under this Consent Decree, including this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendants seeks to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

46. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

47. This Consent Decree resolves all civil claims of the United States for the violations alleged in the Complaint, First Amended Complaint, and Second Amended Complaint occurring through the Date of Lodging.

48. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 47. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or

injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 47.

49. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, any of Defendants' facilities, whether related to the violations addressed in this Consent Decree or otherwise.

50. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to any of Defendants' Refineries that are subject to the requirements of the Tesoro System-Wide Compliance Plan and Audit Requirements (Appendix A), Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 47 of this Section.

51. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in

compliance with provisions of the CAA or with any other provisions of federal, State, or local laws, regulations, or permits.

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

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

XII. COSTS

54. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XIII. NOTICES

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

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
PO Box 7611
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-09622

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

Natalie Firestine
Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street (8MSU)
Denver, Colorado 80202
Telephone: (303) 312-7165
Telefax: (303) 312-6003
Email: firestine.natalie@epa.gov

To EPA:

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

Natalie Firestine
Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street (8MSU)
Denver, Colorado 80202
Telephone: (303) 312-7165
Telefax: (303) 312-6003
Email: firestine.natalie@epa.gov

To Defendants:

Stoney K. Vining
Senior Counsel
Tesoro Companies, Inc.
19100 Ridgewood Parkway
San Antonio, Texas 78259
Telephone: (210) 626-4122
Telefax: (210) 745-4611
Email: Stoney.K.Vining@TSOCorp.com

Raymond B. Ludwiszewski
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone: (202) 955-8500
Telefax: (202) 530-9562
Email: RLudwiszewski@gibsondunn.com

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

57. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

58. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

59. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

60. The terms of this Consent Decree, including any attached Appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

61. Except as provided in Paragraph 62, any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 40, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

62. In the event that the requirements of Clean Air Act Section 211, 42 U.S.C. § 7545, or its implementing regulations, including 40 C.F.R. Part 80, are modified such that alternative methods of complying with the requirements that are the subject of the System-Wide

Compliance Plan in Section I of Appendix A ("Compliance Plan") become available to Tesoro,
Consent Decree

Tesoro may submit to EPA for review and approval under Paragraph 13 (Approval of Deliverables) a request to modify the Compliance Plan to conform to the current statutory or regulatory requirements. If no response from EPA is received by Tesoro within 60 Days from the date the request to modify was delivered to EPA, Tesoro may invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution) of this Decree. Any such modification of the Compliance Plan proposed by Tesoro and approved by EPA will be incorporated into and enforceable under this Consent Decree. To the extent the modification of the Compliance Plan does no more than incorporate alternative methods of complying with the requirements that are the subject of the Compliance Plan in Section I of Appendix A, the modification of the Compliance Plan would not be a material change to this Decree and approval by the Court would not be required. In the event of a qualifying modification of the requirements of Clean Air Act Section 211 or its implementing regulations, Tesoro may submit a proposed modification of the Compliance Plan to EPA together with a description of the basis for the proposal. If EPA does not agree that the proposed modification conforms to the current statutory or regulatory requirements, and Tesoro still believes that modification of Appendix A is appropriate, Tesoro may invoke the dispute resolution procedures of the Consent Decree which shall be the exclusive mechanism to resolving disputes related to such modifications. Any such dispute shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 40, EPA's interpretation of the underlying requirement shall be entitled to the same deference that would be applied to that interpretation in an action by EPA to enforce that requirement.

XVII. TERMINATION

63. If Defendants have completed the requirements of Section VI (Compliance Requirements) of this Decree, have thereafter maintained satisfactory compliance with this Consent Decree, and have paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, then, two years after submission of all Audit Report(s) required by Section II(B) of the Tesoro System-Wide Compliance Plan and Audit Requirements (Appendix A) and completion of implementation of any Action Plan(s) and related final audit(s) required by Section II(C) of the Tesoro System-Wide Compliance Plan and Audit Requirements (Appendix A), Defendants may serve upon the United States a Request for Termination. The Request for Termination shall include, at a minimum, a detailed statement describing the basis for Defendants determination that they have satisfied the requirements described above, all necessary supporting documentation for that statement, and a proposed “Joint Stipulation and Motion to Terminate the Consent Decree.”

64. Following receipt by the United States of Defendants’ Request for Termination, the Parties shall confer informally concerning the Request including any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree and any disagreements the Parties may have regarding the proposed “Joint Stipulation and Motion to Terminate the Consent Decree.” If the United States does not respond to Defendants’ Request for Termination within 90 days after receipt, then Defendants may invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution) of this Decree.

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

b. If the United States does not agree that Defendants have satisfactorily complied with the requirements for termination of this Consent Decree, it shall so notify Defendants in writing which requirements for termination it has determined are not satisfied and the basis for its determination. In such a case, Defendants may take additional actions to satisfy the requirements for termination which the United States has determined have not been satisfied and then submit a revised Request for Termination as provided in paragraph 63. Defendants may also invoke Dispute Resolution under Section IX of this Decree regarding the United States determination that Defendants have not satisfactorily complied with the requirements for termination of this Consent Decree. However, Defendants shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 36 of Section IX, until 90 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

65. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further

notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

66. Each undersigned representative of a Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

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

XX. INTEGRATION

68. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than items prepared and/or submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXI. FINAL JUDGMENT

69. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants.

XXII. APPENDICES

70. The following appendix is attached to and part of this Consent Decree:
“Appendix A” is the Tesoro System-Wide Compliance Plan and Audit Requirements.

Dated and entered this _____ day of _____, 2013.

HONORABLE JAMES E. BOASBERG
United States District Court Judge

For Plaintiff United States of America:

Date

5/1/13

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date

April 2, 2013

MICHAEL T. DONNELLAN
(Maine Bar No. 7531)
Senior Attorney
ABIGAIL E. ANDRÉ
(Ohio Bar No. 0086926)
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044 -7611
Telephone: (202) 514-4226/(202) 305-2775
Facsimile: (202) 616-6584
Email: michael.donnellan@usdoj.gov
abigail.andre@usdoj.gov

RUDOLPH CONTRERAS
DC Bar # 434122
Assistant United States Attorney

KEITH MORGAN
(D.C. Bar No. 422665)
Assistant United States Attorney
555 4TH St. N.W.
Washington, D.C. 29550
Telephone: (202) 514-7566
Facsimile: (202) 353-0121
Email: keith.morgan@usdoj.gov

For the United States Environmental Protection Agency:

Date 5/22/13

[REDACTED]

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

Date 5/17/13

[REDACTED]

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

Date 5/17/2013

[REDACTED]

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

Date 5/14/2013

[REDACTED]

for NATALIE FIRESTINE
Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street (8MSU)
Denver, Colorado 80202

For Defendant Tesoro Corporation

05/22/2013

Date



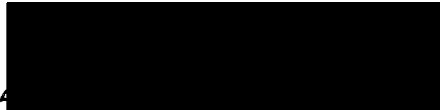
DH

DANIEL R. ROMASKO
Executive Vice President, Operations
Tesoro Corporation

For Defendant Tesoro Refining & Marketing Company LLC

05/22/2013

Date



DH

FRANK WHEELER
Senior Vice President, Refining
Tesoro Refining & Marketing Company, LLC

For Defendant Tesoro Alaska Company:

05/22/2013

Date



DH

FRANK WHEELER
Senior Vice President, Refining
Tesoro Alaska Company

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TESORO CORPORATION, et al.,

Defendants.

Civil Action No. 1:10-cv-00211 (JEB)

CONSENT DECREE

Appendix A

Tesoro System-Wide Compliance Plan and Audit Requirements

APPENDIX A

TESORO SYSTEM-WIDE COMPLIANCE PLAN AND AUDIT REQUIREMENTS

In addition to complying with all applicable federal laws regarding the production and importation of conventional gasoline, including 40 C.F.R. Part 80 (“the Fuels Regulations”), Tesoro shall prepare and implement a System-Wide Compliance Plan (“Compliance Plan”) for all conventional gasoline at all Tesoro Refineries as described in Section I and conduct a Third-Party Audit as described in Section II. Tesoro shall submit a copy of the Compliance Plan to EPA upon completion of preparation.

I. SYSTEM-WIDE COMPLIANCE PLAN (“COMPLIANCE PLAN”)

The Compliance Plan is intended to facilitate and maintain compliance with the Fuels Regulations by Tesoro. The Compliance Plan will cover all conventional gasoline produced by the Tesoro Refineries.¹ Tesoro shall prepare the Compliance Plan within 180 Days of the Effective Date of the Consent Decree and implement the Compliance Plan within 270 Days of the Effective Date of the Consent Decree. If the Compliance Plan includes one or more “Capital Projects,” Tesoro will be permitted an additional 150 Days to implement any provision of this Appendix requiring a Capital Project(s). “Capital Project” means a new construction, expansion, renovation, or replacement, maintenance or rehabilitation project for an existing facility or facilities, or a purchase of assets related to such project costing \$150,000 or more.

The Compliance Plan shall include the requirements specified below. Tesoro is required to implement the Compliance Plan under the Consent Decree. After termination of the Consent Decree, implementation of the Compliance Plan by Tesoro will not be a requirement enforceable by EPA, although Tesoro may elect to continue implementation of the Compliance Plan as a means of facilitating and maintaining compliance with the Fuels Regulations. Termination of the Consent Decree will not alter Tesoro’s obligation to comply with the Fuels Regulations.

A. Protocol for Confirming Batch Homogeneity

The Compliance Plan shall include procedures to ensure that each batch of conventional gasoline produced by Tesoro is homogenous at the time such fuel is sampled for certification testing, including but not limited to:

1. Sampling and testing procedures to confirm batch homogeneity for tanks that have appropriate sampling access to collect upper, middle, and lower samples as described by sections 13.4.2 “Bottle/Beaker Spot Sampling,”² or 13.6 “Tap Sampling,” of the American Society for Testing and Materials International

¹ “Tesoro Refineries” are those refineries owned and/or operated by Tesoro located in Salt Lake City, Utah; Mandan, North Dakota; Anacortes, Washington, and Kenai, Alaska.

² In this case, homogeneity may be demonstrated by comparing the upper, middle and lower samples to assess sameness.

(ASTM) standard practice D4057-95(2000), entitled “Standard Practice for Manual Sampling of Petroleum and Petroleum Products;”

2. Mixing and documentation procedures to confirm batch homogeneity for tanks without appropriate roof port access or sampling tap access to collect upper, middle, and lower samples as described in ASTM standard practice D4057-95(2000);
3. If any Tesoro Refinery uses in-line blending, and collects batch samples using an automatic sampling method specified in ASTM standard practice D4177-95(2002), entitled “Standard Practice for Automatic Sampling of Petroleum and Petroleum Products,” then the Compliance Plan shall include procedures to confirm batch homogeneity consistent with the EPA approved in-line blending waiver under 40 C.F.R. § 80.330 for that Tesoro Refinery;
4. Any other appropriate protocols not provided above that satisfy the requirements of confirming homogeneity. In this case, the relevant Tesoro facility will petition the EPA to allow adoption of the protocol and the parties shall resolve the request consistent with Section XVI of the Consent Decree (Modification);
5. Identification of the specific procedure(s) used for batch homogeneity confirmation at each Tesoro batch certification tank; and
6. Procedures that Tesoro shall follow when the protocol for confirming batch homogeneity fails to confirm that a batch is homogenous, and the batch needs further blending for homogeneity confirmation.

To ensure that each batch of conventional gasoline produced by Tesoro is homogenous at the time such fuel is sampled for certification testing, Tesoro will use one of the procedures set forth in Paragraphs 1-4 above as detailed further in the Compliance Plan.

B. Batch Sampling Protocol

The Compliance Plan shall include procedures to collect representative batch samples for certification testing, for each batch of conventional gasoline produced by Tesoro, including but not limited to:

1. Batch sampling procedures for tanks that have appropriate sampling access to collect running samples as described by section 13.5 Running or All-Level Sampling,” or upper, middle, and lower samples as described by 13.6 “Tap Sampling,” of the ASTM standard practice D4057-95(2000);
2. Batch sampling procedures for tanks without appropriate sampling access to collect running samples as described by section 13.5 “Running or All-Level Sampling,” or upper, middle, and lower samples as described by section 13.6 “Tap Sampling,” of the ASTM standard practice D4057-95(2000);

3. If any Tesoro Refinery uses in-line blending, and collects batch samples using an automatic sampling method specified in ASTM standard practice D4177-95(2002), entitled “Standard Practice for Automatic Sampling of Petroleum and Petroleum Products,” then the Compliance Plan shall include procedures to confirm sample representativeness consistent with the EPA approved in-line blending waiver under 40 C.F.R. § 80.330 for that Tesoro Refinery;
4. Any other appropriate sampling protocols not provided above that satisfy the requirements of obtaining a representative sample. In this case, the relevant Tesoro facility will petition the EPA to allow adoption of the protocol and the parties shall resolve the request consistent with Section XVI of the Consent Decree (Modification);
5. Identification of the specific procedure(s) used for sampling at each Tesoro batch certification tank; and
6. The recertification process for off-specification batches of conventional gasoline that require re-blending, re-confirmation of homogeneity and new batch certification sampling.

To collect representative batch samples for certification testing, Tesoro will use one of the procedures set forth in Paragraphs 1-4 above as detailed further in the Compliance Plan.

C. Quality Assurance System for Fuels Laboratories

The Compliance Plan shall adopt and implement ASTM standard practice D6792-07, “Standard Practice for Quality System in Petroleum Products and Lubricants Testing Laboratories.” The procedures of ASTM D6792-07 are intended to establish and maintain a “best practices” quality system for laboratories at all Tesoro facilities and shall be followed to ensure compliance with the Fuels Regulations for all conventional gasoline produced by Tesoro for distribution or sale in the United States. If requested, Tesoro shall provide EPA a copy of any checklists, reports, or materials generated as a result of implementation and compliance with the procedures of ASTM D6792-07 within 30 Days of such request. In addition to implementing ASTM D6792-07, Tesoro shall ensure all laboratory procedures comply with the appropriate ASTM method, as incorporated in the current Fuels Regulations, or other test methods allowed by any future amendments to the Fuels Regulations.

D. Participation in the ASTM RFG Proficiency Testing Interlaboratory Crosscheck Program

The Compliance Plan shall require all Tesoro Refineries that test conventional gasoline for properties required to be reported to EPA under the Fuels Regulations to participate in the ASTM RFG Proficiency Testing Interlaboratory Crosscheck Program (“RFG Crosscheck Program”) each month for all parameters covered by the RFG Crosscheck Program and reported to EPA under the Anti-Dumping Program (i.e., Reid Vapor Pressure, API Gravity, distillation, aromatics, olefins, benzene, and sulfur). The RFG Crosscheck Program is administered by ASTM International (formerly known as the American Society for Testing and Materials) and

the requirements of the program are set forth on ASTM International's website at http://www.astm.org/STATQA/Reform_Gas.htm. If requested, Tesoro shall provide EPA a copy of any test data, reports or materials generated as a result of implementation and compliance with the procedures of the RFG Crosscheck Program within 30 Days of such request. The RFG Crosscheck Program is intended to provide Tesoro laboratories with a statistical quality assurance tool to monitor, improve and maintain performance in laboratory testing.

E. Reporting Protocol

The Compliance Plan shall include procedures to comply with the reporting requirements set forth in the Fuels Regulations, for each batch of conventional gasoline produced by Tesoro, including but not be limited to:

1. Procedures to ensure that Tesoro is correctly reporting the volume of batches of gasoline that it produces and imports. The procedures shall be designed to ensure that all volumes of gasoline that Tesoro produces and imports are accurately measured, that the volume data in all Tesoro maintained databases is accurate and timely updated, and that the volume of each batch is accurately reported to EPA;
2. Procedures to ensure that Tesoro accurately reports all of the values and properties of each batch required to be reported by the Fuels Regulations;
3. Procedures to assign a unique number for each batch consistent with the Fuels Regulations, including 40 C.F.R. § 80.65(d)(3), 40 C.F.R. § 80.365(b)(1)(ii) and 40 C.F.R. § 80.1347(b); and
4. Procedures to ensure that all reports required by the Fuels Regulations are complete, accurate, and filed in a timely manner.

F. Recordkeeping Protocol

The Compliance Plan shall include procedures to ensure Tesoro is complying with all recordkeeping requirements set forth in the Fuels Regulations, for each batch of conventional gasoline produced by Tesoro, including but not limited to:

1. Maintaining records containing the results of tests performed in accordance with 40 C.F.R. § 80.101(i);
2. Proper recording of the Reid Vapor Pressure to the nearest hundredth unit at all facilities;
3. Maintaining original records concerning tests of gasoline properties for five years from the date the test was performed; and
4. Tesoro's capability to produce, upon request by EPA, original test records for gasoline properties for batch files.

G. Training of Staff

Tesoro shall provide training to all staff involved with carrying out compliance with the Fuels Regulations and this Compliance Plan. The training shall include a review of this Compliance Plan, documents related to the ASTM standard practice D6792-07, documents related to the RFG Crosscheck Program, and any other Standard Operating Procedures (SOPs) relevant to complying with the Fuels Regulations. Each member of the staff involved in carrying out compliance with the Fuels Regulations shall certify that he or she has participated in the training, received a copy of Tesoro's SOPs, the Fuels Regulations, and a copy of this Compliance Plan, and recognize that violations of the Fuels Regulations can result in the imposition of significant civil penalties.

II. THIRD PARTY AUDIT

A. Independent (3rd Party) Review/Auditing of Laboratories

Within 180 Days of the completion of implementation of the Compliance Plan, Tesoro shall submit to EPA for approval the name of a qualified independent auditing firm(s) that Tesoro proposes to conduct an audit to evaluate whether the Compliance Plan addresses the requirements set forth in this Appendix and Tesoro's compliance with the terms of the Compliance Plan. Tesoro may choose a single auditing firm for Tesoro's facilities, or may select different firms for different facilities or tasks. The auditing firm(s) may begin conducting its review of the Compliance Plan at any time, and must begin its audit of Tesoro's compliance with the Compliance Plan within 365 Days of the Effective Date of this Consent Decree. The audits shall evaluate compliance by Tesoro with the terms of the Compliance Plan from the date that the Compliance Plan is implemented through the last day of the on-site portion of the audit. The on-site portion of all audits shall be completed no later than 460 Days after implementation of the Compliance Plan.

Each audit team must meet the following criteria:

1. The audit team must have expertise and competence in the regulatory fuels programs under Title II of the CAA;
2. No audit team member may directly own any stock in Tesoro or in any parent or subsidiary organization;
3. No audit team member may have any other direct financial stake in the outcome of the audit; and
4. Each audit team member must be capable of exercising the same independent judgment and discipline that a certified public accounting firm would be expected to exercise in auditing a publicly held corporation. The audit team shall be paid by Tesoro in an amount sufficient to fully carry out the provisions of this Consent Decree.

Designated representatives of EPA shall be permitted to participate in the audit as observers; however, the audit may take place in the absence of their presence as observers. Tesoro shall notify EPA at least 14 Days before each audit is scheduled in order to make arrangements for observers to be present. One or more Tesoro representatives with a comprehensive understanding of the Compliance Plan and the Fuels Regulations shall accompany the audit team to assist the team in understanding how the Compliance Plan works and applies to specific operations and employees. Other Tesoro representatives may also participate in the on-site audits as observers. Tesoro representatives shall not interfere with the independent judgment of the auditing team.

B. Independent Audit Report

Tesoro shall direct the auditing team to draft Audit Reports for each facility. The auditor shall complete the audit and send a copy of the Audit Report to EPA no later than 90 Days after the completion of the on-site portion of the audit. The Audit Reports shall present the Audit Findings and shall, at a minimum, contain the following information:

1. Audit scope, including the period of time covered by the audit;
2. Evaluate whether Tesoro's Compliance Plan addresses the requirements set forth in Section I of this Appendix and whether Tesoro is in compliance with the provisions of the Compliance Plan;
3. The date(s) the on-site portion of the audit was conducted;
4. Identification of audit team members;
5. Identification of Tesoro's representatives and regulatory agency personnel observing the audit;
6. A summary of the audit process, including any obstacles encountered;
7. Detailed audit findings, including 1) a completed checklist from appendix X2.1 of ASTM D6792-07 and comments supporting the basis for each finding and each area of concern identified, and 2) a summary of Tesoro's compliance with each separate element of the Compliance Plan;
8. Recommendations by the auditing team based on the audit findings and areas of concern for Tesoro to comply with the Fuels Regulations and ASTM D6792-07.
9. Identification of any Audit Findings corrected or Areas of Concern addressed during the audit, and a description of the corrective measures and when they were implemented; and
10. Certification by the Auditor that the audit was conducted in accordance with the provisions of this Consent Decree.

Before the Audit Report is submitted to EPA, Tesoro may review a draft of the Audit Report for the purposes of making comments and suggestions on the Report. In response to any comments or suggestions made by Tesoro, the auditors may modify the Audit Report in any way the auditors deem appropriate. The final Audit Report shall contain a specification of all modifications made to the report in response to Tesoro's comments and suggestions on the Report.

C. Follow-Up Corrective Measures

Upon receiving the first Audit Report for each facility, Tesoro shall investigate all areas of concern discovered by the audit. Within 60 Days of receiving the Audit Report for each facility, Tesoro shall develop an Action Plan(s) for each facility that fully addresses all significant areas of concern and expeditiously brings the facility into full conformance with the Compliance Plan. The Action Plan(s) shall identify the results of the investigation of all concerns found by the audit and provide specific deliverables, responsibility assignments, and an implementation schedule. The Action Plan(s) shall also include updating the Compliance Plan and all SOPs that are affected. Tesoro shall complete the Action Plan(s) within 75 Days of receiving the Audit Report for each facility and shall send a copy of each Action Plan(s) to EPA upon completion. Upon completing the Action Plan(s), Tesoro will implement the Action Plan(s) in accordance with the requirements and schedules set forth therein. Implementation of the audit procedures described herein does not constitute a waiver or release for the violation of any laws or regulations occurring after the entry of this Consent Decree. If one or more Action Plans are required, then one year after the Third Party Audit, Tesoro shall hire the same qualified independent auditing firm to conduct a final Audit in order to verify full implementation of the Action Plan(s) and report the result to EPA.

III. CONFIDENTIAL BUSINESS INFORMATION

Tesoro may assert that information required to be provided under this Appendix is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendants seeks to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.