

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.)	Civil Action
)	No. H-01-0978
MOTIVA ENTERPRISES LLC,)	Honorable Melinda Harmon
Defendant.)	
_____)	

FOURTH ADDENDUM TO CONSENT DECREE

WHEREAS, the United States of America (hereinafter “the United States”); the State of Delaware, and the State of Louisiana, Motiva Enterprises LLC (hereinafter “Motiva”), and The Premcor Refining Group Inc. (hereinafter “Premcor”) are parties to a Consent Decree entered by this Court on August 20, 2001, and amended on May 29, 2002, December 23, 2003, and June 17, 2004 (hereinafter “the Consent Decree”); and

WHEREAS, the Valero Energy Corporation (“Valero”) (hereinafter referred to as “Valero (Premcor)”) subsequently purchased the Delaware City Refinery from Premcor; and

WHEREAS, each of the undersigned has reviewed and hereby consents to this Fourth Addendum; and

NOW THEREFORE, the United States, the State of Delaware, the State of Louisiana, Motiva, and Valero (Premcor) hereby agree that, upon approval of this Fourth Addendum by the Court, the Consent Decree shall thereby be amended as follows:

1. Paragraph 134A and Section P shall be added to Part VII. Program Enhancements re: Leak Detection and Repair, as follows:

P. New Monitoring Technologies.

134A. New Monitoring Technologies. Motiva may propose a protocol for a pilot project at the Norco, Convent and/or Port Arthur Refineries to demonstrate that an optical imaging-based LDAR program is an equivalent or better means than a Method 21-based program in reducing VOC emissions from Refinery equipment and in monitoring for emissions of VOCs at the internal leak definition levels of Paragraphs 114 and 115. This protocol may include a modified schedule for implementing the provisions of this Section for specified process units. Any schedule modification shall be only to the extent needed to gather comparative data necessary for implementation of the pilot project and shall be in effect only for the duration of the data-gathering under the protocol. EPA has sole discretion to approve or disapprove all or parts of this protocol. Upon receiving EPA's approval of the entire protocol, Motiva may implement the pilot project. Any such implementation must be in strict accordance with the approved protocol and must not be inconsistent with the requirements of 40 C.F.R. §§ 60.18, 63.11, and 65.7, as amended on December 22, 2008. After any such pilot project is conducted, Motiva must submit the full results, including complete data sets, to EPA. EPA will review the results. After EPA's review, EPA may, in its sole discretion, approve a change to a part or all of this Section to take advantage of the new leak detection technology if EPA has determined that the completed pilot project has demonstrated that an optical imaging-based LDAR

program is an equivalent or better means than a Method 21-based program in reducing VOC emissions from Refinery equipment using the internal leak definition levels of Paragraphs 114 and 115. Any such modification to these LDAR provisions will be filed with the Court in accordance with the requirements of Paragraph 229.

2. The following subparagraphs are added to the end of Paragraph 135(a) of Part VIII. Program Enhancements re: NSPS Subparts A and J SO₂ Emissions from Sulfur Recovery Plants and Flaring, as follows:

135(a).

(i) If, prior to termination of the Consent Decree, any of the flares at the Norco, Convent, Port Arthur or Delaware City Refinery that is subject to Subpart J becomes subject to NSPS Subpart Ja due to a modification (as defined in the final Subpart Ja regulation), such modified flare(s) shall be subject to NSPS Subpart Ja in lieu of NSPS Subpart J as a result of the modification. In the event the work undertaken by Motiva or Valero (Premcor), as applicable, to comply with NSPS Subpart J is determined to be a modification (as defined in the final Subpart Ja regulation), the modified affected facility shall be subject to and comply with NSPS Subpart Ja in lieu of NSPS Subpart J for that regulated pollutant to which a standard applies as a result of the modification.

(ii) If, prior to the termination of this Consent Decree, any of the flares at the Norco, Convent, Port Arthur or Delaware City Refinery that is subject to Subpart J becomes subject to NSPS Subpart Ja due to a “reconstruction” (as that term is defined in the final Subpart Ja rule), the reconstructed facility shall be subject to and comply with NSPS Subpart Ja for all pollutants in lieu of Subpart J.

(iii) On September 25, 2008, Valero (Premcor) and Plaintiff-Intervener, the State of Delaware executed a Conciliation Order (the “Delaware Conciliation Order”) governing the Frozen Earth Storage unit at the Delaware City Refinery. The Delaware Conciliation Order provides, *inter alia*, that Valero (Premcor) will decommission the Frozen Earth Storage unit at the Delaware City Refinery, thereby eliminating any flow from the Frozen Earth Storage unit to the Frozen Earth Propane flare. The permanent shutdown of the Frozen Earth Propane flare unit in compliance with the Delaware Conciliation Order and surrender of the permit shall be deemed to satisfy all requirements of this Consent Decree (including the flare study requirement in Paragraph 135(a)) applicable to the Frozen Earth Propane flare, on and after the later of: (i) the date of the shutdown of the flare; or (ii) the date of the surrender of the permit.

3. Paragraph 172 of Part XI, General Recordkeeping, Record Retention and Reporting, shall be deleted and restated in its entirety to read as follows:

172A. Motiva or Valero (Premcor), as appropriate (“the Company or Companies”), shall submit semi-annual reports to EPA and the appropriate Plaintiff-Intervener. Semi-annual reports shall be submitted by August 31 (covering the period from January 1 to June 30) and February 28 (covering the period from July 1 to December 31). In the semi-annual report required to be submitted on August 31 of each year for each Refinery, Motiva or Valero (Premcor) will provide a summary of annual emissions data for the prior calendar year to include:

- (a) NO_x emissions in tons per year for each heater and boiler greater than 40 mmBTU/hr maximum fired duty;
- (b) NO_x emission in tons per year as a sum for all heaters and boilers less than 40 mmBTU/hr maximum fired duty;
- (c) SO₂, CO and PM emissions in tons per year as a sum for all heaters and boilers;
- (d) NO_x, SO₂, CO and PM emissions in tons per year for each FCCU;
- (e) SO₂ emissions in tons per year from all Sulfur Recovery Plants;
- (f) SO₂ emissions in tons per year from all acid gas flaring and tail gas incidents;
- (g) NO_x, SO₂, PM and CO emissions in tons per year as a sum at each Refinery for all other emissions units for which emissions information is required to be included in the Refinery's annual emissions summaries and are not identified above; and
- (h) for each of the estimates in (a) through (d) above, the basis for the emissions estimate or calculation (i.e., stack tests, CEMS, emission factor, etc.).

To the extent that the required emissions summary data is available in other reports generated by Motiva or Valero, such other reports can be attached, or the appropriate information can be extracted from such other reports and attached to the semi-annual report to satisfy the requirement. Any time during the life of the Decree, Motiva or Valero may submit a request to EPA to terminate the requirements of this Paragraph with respect to the Company's refinery(ies), and if EPA approves, the Company shall no longer be required to provide this additional information.

172B. In addition to any other information specifically required to be submitted per other Sections of this Consent Decree, each semi-annual report shall contain the following:

- (a) progress report on the implementation of the requirements of Parts IV-IX, and XII (Compliance Programs);

- (b) a summary of all Hydrocarbon Flaring Incidents;
- (c) a description of any problems anticipated with respect to meeting the Compliance Programs of Parts IV-IX of this Consent Decree; and
- (d) a summary of all exceedances of emission limits required or established by this Consent Decree, which will include:
 - (i) for operating units emissions limits that are required by the Consent Decree and monitored with CEMS or PEMS, for each CEMS or PEMS:
 - (A) total period during which the emissions limit was exceeded, if applicable, expressed as a percentage of operating time for each calendar quarter;
 - (B) where the operating unit has exceeded the emissions limit more than 1% of the total time of the calendar quarter, identification of each averaging period that exceeded the limit by time and date, the actual emissions of that averaging period (in the units of the limit) and any identified cause for the exceedance (including startup, shutdown, maintenance, or malfunction), and, if it was a malfunction, an explanation and any corrective actions taken;
 - (C) total downtime of the CEMS or PEMS, if applicable, expressed as a percentage of operating time for the calendar quarter;
 - (D) where the CEMS or PEMS downtime is greater than 5% of the total time in a calendar quarter for a unit, identify the periods of downtime by time and date, and any identified cause of the downtime (including maintenance or malfunction), and, if it was a malfunction, an explanation and any corrective action taken.
 - (E) if a report filed pursuant to another applicable legal requirement contains all of the information required by this Subparagraph in similar or same format, the requirements of this Subparagraph may be satisfied by attaching a copy of such report.
 - (ii) for any exceedance of an emissions limit required by the Consent Decree from an operating unit monitored through stack testing:
 - (A) a summary of the results of the stack test in which the exceedance occurred;
 - (B) a copy of the full stack test report in which the exceedance occurred;
 - (C) to the extent that the Company has already submitted the stack test results, the company need not resubmit them, but may instead reference the submission in the report (e.g., date, addressee, reason for submission).

4. Paragraph 173 of Part XI, General Recordkeeping, Record Retention and Reporting, shall be deleted and restated in its entirety to read as follows:

173. The semi-annual report shall be certified by a refinery manager or company official responsible for environmental management and compliance at the refinery/refineries covered by the report, as follows:

“I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.”

5. Part XVIII, General Provisions, shall be amended by adding a new Paragraph 210A, as follows:

210A. Effect of Shutdown. The permanent shutdown of a unit and the surrender of all permits for that unit will be deemed to satisfy all requirements of this Consent Decree applicable to that unit on and after the later of: (i) the date of the shutdown of the unit; or (ii) the date of the surrender of all permits. The permanent shutdown of Refinery and the surrender of all air permits for that Refinery will be deemed to satisfy all requirements of this Consent Decree applicable to that Refinery on and after the later of: (i) the date of the shutdown of the Refinery; or (ii) the date of the surrender of all permits.

6. Paragraph 215 of Part XVIII General Provisions shall be further amended to include the following information:

As to the United States Environmental Protection Agency:

Director, Air Enforcement Division (2242A)

Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

And an electronic copy to:
Director, Air Enforcement Division
c/o Matrix New World Engineering, Inc.
120 Eagle Rock Ave., Suite 207 East Hannover, NJ 07936-3159
om

As to Valero (Premcor):

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

Richard Walsh
Assistant General Counsel and Vice President
Environmental Safety & Regulatory Affairs
Valero Energy Corporation
One Valero Way
San Antonio, Texas 78249

As to Motiva:

Michael P. Gallagher
Regional Manager, HSSE Americas
Shell Oil Products US
910 Louisiana Street
Houston, TX 77002

And electronic copies to:
Pierre.espejo@shell.com

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7. Paragraph 216 shall be deleted and replaced in its entirety with:

216. **Approvals.** All EPA approvals will be made in writing. All Plaintiff-
Intervener approvals will be sent from the offices identified in Paragraph 215 (Notice).

8. Paragraph 220 shall be deleted and restated in its entirety to read as follows:

220. Modification. The Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation or understanding. Prior drafts of the Consent Decree shall not be used in any action involving the interpretation or enforcement of the Consent Decree.

a. Material modifications to this Consent Decree with respect to the Norco, Convent, or Port Arthur Refineries, shall be in writing, signed by Motiva, the U.S. Environmental Protection Agency, the Department of Justice, and the applicable State agencies, but not by Valero (Premcor), and shall be effective upon approval by the Court. Material 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 applicable State agencies, but not by Motiva, and shall be effective upon approval by the Court.

b. Non-material modifications to this Consent Decree with respect to the Norco, Convent or Port Arthur Refineries, shall be effective upon signature by the Parties, in writing, signed by Motiva, the U.S. Environmental Protection Agency, the Department of Justice, and the applicable State agencies, but not by Valero (Premcor), and need not be filed with the Court. Non-material modifications to this Consent Decree with respect to the Delaware City Refinery shall be effective upon signature by the Parties, in writing, signed by Valero (Premcor), the U.S. Environmental Protection Agency, the Department of Justice, and the applicable State agencies, but not by Motiva, but need not be filed with

the Court. The United States will file non-material modifications with the Court on a periodic basis. For purposes of this Paragraph, non-material modifications include but are not limited to modifications to the frequency of reporting obligations and modifications to schedules that do not extend the date for compliance with emissions limitations following the installation of control equipment or the completion of a catalyst additive program, provided that such changes are agreed upon in writing between EPA and Motiva or Valero (Premcor), as applicable.

So entered in accordance with the foregoing this ____ day of _____, 20__.

Melinda Harmon
United States District Court Judge
Southern District of Texas

SIGNATORIES

Each of the undersigned representatives certifies that he or she is fully authorized to enter into the Fourth Addendum to Consent Decree on behalf of such Parties, and to execute and to bind such Parties to this Fourth Addendum. This Fourth Addendum to Consent Decree may be signed in counterparts.

WE HEREBY CONSENT to the entry of the Fourth Addendum to Consent Decree entered in the matter of *United States, et al. v. Motiva Enterprises LLC*, 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: ___Nov. 14, 2010_____

_____/s/ Ignacia S. Moreno_____
IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

_____/s/ Robert D. Brook_____
ROBERT D. BROOK
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Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
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(202) 514-2738 (phone)

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Date: ___Nov. 23, 2010_____

_____/s/ John Fogarty_____
JOHN FOGARTY
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v

JOSÉ ANGEL MORENO
United States Attorney
Southern District of Texas

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

FOR PLAINTIFF THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:

Date: May 10, 2010

/s/ Pamela J. Mazakas for
ADAM M. KUSHNER
Director, Office of Civil Enforcement
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency

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FOR PLAINTIFF THE STATE OF DELAWARE:

Date: Sept. 1, 2010

/s/ Collin O'Marra
COLLIN O'MARRA
Secretary
Department of Natural Resources and
Environmental Control
89 Kings Highway
Dover, Delaware 19901

Date: Sept. 9, 2010

/s/ Valerie Satterfield
VALERIE SATTERFIELD
Deputy Attorney General
Office of the Attorney General
102 West Water Street, Third Floor
Dover, Delaware 19904

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

FOR PLAINTIFF THE STATE OF LOUISIANA:

Date: April 11, 2010

/s/ Paul D. Miller
PAUL D. MILLER P.E.
Assistant Secretary
Office of Environmental Compliance
Louisiana Department of Environmental Quality

Date: April 12, 2010

/s/ Ted R. Broyles, II
TED BROYLES, II
Senior Attorney
Office of the Secretary
Legal Affairs Division
P.O. Box 4302
Baton Rouge, Louisiana 70821

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

FOR DEFENDANT MOTIVA ENTERPRISES
LLC:

Date: Dec. 21, 2009

/s/ Michael P. Gallagher
MICHAEL P. GALLAGHER
HSSE Manager, Americas
Shell Oil Products US
910 Louisiana Street
Houston, TX 77002

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

FOR DEFENDANT VALERO ENERGY
CORPORATION:

Date: _____

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

CERTIFICATE OF SERVICE

I hereby certify that this 13th day of December, 2010, a copy of this Fourth Addendum to Consent Decree was filed with the Clerk of the U.S. District Court for the Southern District of Texas using the Court's CM/ECF system, and was served first class via U.S. Mail upon:

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