UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:	)	**Docket No.** CAA (112r)-09-2023-0004
	)	
Valero Benicia Refinery	)	
Valero Refining Company - California	)	
3400 East Second Street	)	
Benicia, California 94510	)	
	)	**CONSENT AGREEMENT**
	)	**AND FINAL ORDER**
	)	**40 C.F.R. §§ 22.13 and 22.18**
Respondent.	)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Valero Refining Company - California, a subsidiary of Valero Energy Company.

2. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations.

3. EPA and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CA/FO. Respondent agrees to comply with the terms of this CA/FO.

B. GENERAL ALLEGATIONS

4. Respondent owns and operates a facility located at 3400 East Second Street, Benicia, California ("Facility"). The Facility is a petroleum product refinery. Respondent refers to the Facility's Crude Unit as the "Pipestill." In this CA/FO the terms "Crude Unit" and "Pipestill" may be used interchangeably.

5. In May 2017 there was a refinery-wide power outage that resulted in flaring and a large release of sulfur dioxide and flammable materials from the Facility. In response to this incident, members of the public were evacuated, required to shelter in place, or visited the emergency room of local hospitals.

6. In March 2019, the Facility experienced equipment failure that resulted in flaring and a large release of sulfur dioxide. In response to this incident, Solano County issued an advisory for residents with respiratory conditions.

7. After these incidents, EPA performed several site visits as part of an inspection of the Facility between March 29, 2019, and July 30, 2019, to evaluate Respondent's implementation of and compliance with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304-312 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11004-12, and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9603.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity ("TQ") must prepare and implement a risk management plan ("RMP") to detect and prevent or minimize accidental releases of such substances from the stationary sources in order to protect human health and the environment.

9. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.

10. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

11. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA pursuant to Delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority to the Director of the Enforcement and Compliance Assurance Division pursuant to Regional Delegation R9-7-6-A, dated February 11, 2013. On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division is therefore delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

12. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

13. At all times relevant to this CA/FO, the Facility has been a "stationary source" as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

14. At all times relevant to this CA/FO, Respondent has been the "owner or operator" of the Facility as defined by Sections 111(a)(5) and 112(a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9).

15. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each "regulated substance" at or above which a facility using such a substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

For substances designated as "regulated flammable substances," the TQs are specified at 40 C.F.R. § 68.130, Tables 3 and 4.

16. At all times relevant to this CA/FO, Respondent had 10,000 pounds or more of regulated flammable substances, in at least 10 processes at its Facility, exceeding the TQ for one or more of those substances listed in 40 C.F.R. § 68.130, Tables 3 and 4. At the Facility, Respondent generates, uses, and/or stores several chemicals identified as "flammable mixtures" including butane, ethane, ethyl mercaptan, hydrogen, isobutane, methane, pentane, and propane.

17. At all times relevant to this CA/FO, Respondent has been the "owner or operator" of a "stationary source" that has at least one regulated substance in an amount equal to or in excess of the applicable TQ in a "process" as defined by 40 C.F.R. § 68.3, the distance to the flammable endpoint for a worst-case release assessment includes public receptors, and its North American Industry Classification System code is 32411, therefore is subject to the Program 3 requirements provided in 40 C.F.R §§ 68.65 to 68.87.

18. CERCLA Section 103(a), 42 U.S.C. § 9603(a), requires any person in charge of a Facility, as defined in the Statute at Section 101(9), 42 U.S.C. § 9601(9), to immediately notify the National Response Center ("NRC") as soon as the person in charge has knowledge of a release of a hazardous substance from such Facility in an amount equal to or greater than the Reportable Quantity ("RQ").

19. Benzene is a hazardous substance as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) with a RQ of 10 pounds pursuant to 40 C.F.R. § 304.2. At all times relevant to this CA/FO, Respondent exceeded 10 pounds or more of benzene in one or more processes at the Facility, and is therefore required, pursuant to CERCLA Section 103, 42 U.S.C. § 9603, to immediately notify the NRC of any release of a hazardous substance, including benzene.

20. Carbonyl Sulfide ("COS") is a hazardous substance as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) with a RQ of 100 pounds pursuant to 40 C.F.R. § 304.2. At all times relevant to this CA/FO, Respondent exceeded 100 pounds or more of COS in one or more processes at the Facility, and is therefore required, pursuant to CERCLA Section 103, 42 U.S.C. § 9603, to immediately notify the NRC of any release of a hazardous substance, including COS.

21. Xylene is a hazardous substance as defined in Sections 103 of CERCLA, 42 U.S.C. § 9601(14), with a RQ of 100 pounds pursuant to 40 C.F.R. § 304.2. At all times relevant to this CA/FO, Respondent exceeded 100 pounds or more of xylene in one or more processes at the Facility, and is therefore required, pursuant to CERCLA Section 103, 42 U.S.C. § 9603, to immediately notify the NRC of any release of a hazardous substance, including xylene.

22. Benzene, COS, and xylene are by-products of some of the process units at the Facility.

23. EPCRA Section 304, 42 U.S.C. § 11004, requires the owner or operator of a Facility at which an extremely hazardous substance ("EHS") is produced, used, or stored to immediately notify the appropriate governmental entities of any release that requires notification under Section 304 of EPCRA, and of any release in an amount that meets or exceeds the RQ of an EHS listed under Section 302 of EPCRA, 42 U.S.C. § 11002. The notification must be given to the designated state emergency response commission ("SERC") for each state likely to be affected by the release and to the community emergency response coordinator for the Local Emergency Planning Committee ("LEPC") for all areas likely to be affected by the release.

24. Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25, requires the owner or operator of a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*, to submit an annual emergency and hazardous chemical inventory form ("inventory form")

containing information on hazardous chemicals present at the facility during the preceding calendar year above the threshold levels established in 40 C.F.R. § 370.20(b). This inventory form must be submitted by March 1 of each year to the SERC, the LEPC, and the fire department having jurisdiction over the Facility. 40 C.F.R. § 370.25.

25. 40 C.F.R. § 355.32 provides that if a release of an EHS or CERCLA hazardous substance is continuous and stable in quality and rate (as defined in 40 C.F.R. § 302.8(b)), then such a release qualifies for reduced reporting requirements (as described in that section), provided that in addition to making the notifications required under 40 C.F.R. § 302.8, the reporter make additional notifications to the SERC and LEPC as described in 40 C.F.R. § 355.32. However, failure to comply with all reporting requirements subjects the owner/operator of a facility to the reporting requirements for each individual release exceeding any RQ. 40 C.F.R. § 302.8(m).

26. Sulfur dioxide is an EHS listed in 40 C.F.R. Part 355, Appendices A and B, promulgated pursuant Section 302 of EPCRA, 42 U.S.C. § 11002, with an RQ of 500 pounds. At all times relevant to this CA/FO, Respondent exceeded 500 pounds or more of sulfur dioxide in one or more processes at the Facility and is required to immediately notify the SERC and LEPC for any release of an EPCRA Section 302 EHS, including sulfur dioxide.

27. Ammonia is an EHS listed in Appendix A to 40 C.F.R. Part 355, pursuant to Section 312(c) of EPCRA, 42 U.S.C. § 11022(c).

28. Based upon the information gathered during this inspection and subsequent investigation, EPA asserts that Respondent violated certain provisions of the CAA, EPCRA and CERCLA.

C. VIOLATIONS

COUNT I

Failure to Timely Report Releases of an Extremely Hazardous Substance

29. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

30. Between March 3, 2016, and May 7, 2019, the Facility did not immediately report eleven releases of sulfur dioxide, which were over the 500-pound RQ, to the SERC and LEPC.

31. Failure to immediately report the releases of sulfur dioxide in excess of the RQ violated EPCRA Section 304, 42 U.S.C. § 11004.

COUNT II

Failure to Properly Identify Anhydrous Ammonia in Annual Tier II Hazardous Materials Inventory Reporting

32. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

33. Respondent is required to submit an annual inventory form pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25.

34. Respondent failed to properly identify anhydrous ammonia in its 2019 inventory form.

35. By failing to properly identify anhydrous ammonia in its annual inventory form, Respondent violated EPCRA Section 312, 42 U.S.C. § 11022, and implementing regulations at 40 C.F.R. §§ 370.40 and 370.42.

COUNT III

Failure To Immediately Report a Release of a Hazardous Substance

36. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

37. The Respondent did not immediately report a release of COS on January 12, 2016, which was over the 100-pound RQ, to the NRC.

38. The failure to immediately report the release of COS in excess of the RQ violated CERCLA Section 103, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

COUNT IV

Failure to Report Release Exceeding Reportable Quantities

39. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

40. On 57 separate dates between January 1 and September 26, 2019, the Facility discharged benzene and xylene in exceedance of the RQs from a continuous atmospheric process vent.

41. This set of releases could properly have been reported as a continuous release pursuant to 40 C.F.R. §§ 302.8 and 355.32.

42. Respondent did not submit an initial report for the continuous process vent to atmosphere and did not report the 57 individual releases which exceeded the RQs in 2019.

43. By failing to provide an initial report of the continuous release and failing to report the exceedances of reportable quantities, Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603; Section 304 of EPCRA, 42 U.S.C. § 11004; and 40 C.F.R. §§ 302.8, 355.30, 355.32 and 355.60.

COUNT V

Failure to Update Process Safety Information

44. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

45. 40 C.F.R. § 68.65(d)(1)(ii) requires that the Respondent complete a compilation of written process safety information ("PSI") before conducting any process hazard analysis required by the rule, and in particular Piping and Instrumentation Diagrams ("P&IDs") pertaining to the equipment in the process.

46. Nine of the Respondent's P&IDs were inconsistent between the drawings and in the field, including valve locations, valve sizes, and local gauges.

47. By failing to maintain current process safety information, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.65(d)(1)(ii).

COUNT VI

Failure to Update Process Safety Information

48. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

49. 40 C.F.R. § 68.65 (d)(1)(iv) requires that the Respondent complete a compilation of written PSI before conducting any process hazard analysis required by the rule, and in particular information pertaining to the equipment in the process to include relief system design and design basis.

50. Respondent failed to update data sheets for Pressure Relief Valves ("PRVs") SV-107, SV-126a, SV-126b, SV-318, SV-3052, and SV-10109 to reflect changes in equipment, operating conditions, and crude properties.

51. By failing to maintain current process safety information, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.65(d)(1)(iv).

COUNT VII

Failure to Document Process Safety Information Relating to Recognized and Generally Accepted Good Engineering Practices

52. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

53. 40 C.F.R. § 68.65(d)(2) requires that the Respondent document that equipment complies with recognized and generally accepted good engineering practices ("RAGAGEP").

54. RAGAGEP or common industry standards of care include standards such as, but not limited to, American Petroleum Institute ("API") Recommended Practice 571, "Damage Mechanisms Affecting Fixed Equipment in the Refining Industry."

55. Respondent failed to adequately document the effect of fouling in the Crude Unit feed preheat system and associated PRVs.

56. By failing to document that the Crude Unit feed preheat system complies with RAGAGEP, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.65(d)(2).

COUNT VIII

Failure to Adequately Address the Hazards and Complete Qualitative Analyses Within Process Hazard Analyses

57. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

58. 40 C.F.R. § 68.67 requires that the Respondent perform a Process Hazard Analysis ("PHA").

59. 40 C.F.R. § 68.67 (c)(1) and (c)(7) require that the PHA analyze the hazards of the process and include a qualitative evaluation of a range of the possible safety and health effects of failure of controls.

60. The Respondent prepared PHAs for the Flare and Chemical Storage Utilities, Coker Unit, Fluidized Catalytic Cracking Unit ("FCCU"), and Crude Unit.

61. Within the PHAs and related documents, the Respondent failed to adequately analyze multiple hazards, including those related to: power disruptions; effect of inadvertent activation of PRV 107 bypassing the Crude Unit feed preheat system and heater F-105; not considering the effect of partial unit shutdowns; effect of caustic fouling in the Crude Unit feed preheat system and the PRVs; and hydrocarbon carryover to a vent with possible ignition.

62. By failing to adequately analyze hazards of the process Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.67(c)(1) and (c)(7).

COUNT IX

Failure to Address Engineering and Administrative Controls and Qualitative Evaluation in PHAs

63. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

64. 40 C.F.R. § 68.67(c)(3) and (c)(7) requires that the PHA address, among other things, engineering and administrative controls applicable to the hazards and their interrelationships, such as appropriate application of detection methodologies to provide early warning of releases; consequences of failure of engineering and administrative controls; and a qualitative evaluation of a range of the possible safety and health effects of failure of controls.

65. The Flare and Chemical Storage Utilities PHA was not titled or described as including a LOPA or SPA, and used modifiers to reduce perceived risk.[1] In addition, the Respondent's policies provided no explicit restrictions on the number of modifiers used per scenario.

66. The Flare and Chemical Storage Utilities, Coker Unit and Crude Unit PHAs used generic engineering and administrative controls such as, but not limited to, "operator training" and "global mechanical integrity program." Operator training and a mechanical integrity program are not engineering or administrative controls (also known as safeguards) and they do not apply to the specific scenario being analyzed but rather to the entire process.

67. Respondent used modifiers and generic, rather than specific, engineering and administrative controls in its PHAs. This likely affected the engineering and administrative controls analysis applicable to the hazards and their interrelationships, and the qualitative evaluation of a range of the possible safety and health effects of failure of controls. By using these modifiers and generic engineering and administrative controls Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.67(c)(3) and (c)(7).

COUNT X

Failure to Adequately Develop and Implement Written Operating Procedures

68. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

69. 40 C.F.R. § 68.69(a) requires the Respondent to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information.

[1] A layer of protection analysis (LOPA) or safeguard protection analysis (SPA) are additional analyses, which may be used for specific PHA scenarios. "Modifiers" are actions or events that can reduce the probability of an undesirable event, and may be applied during a LOPA or SPA.

70. The Respondent's operating procedures for the Coker Unit and Crude Unit did not adequately address: operation of a process heater in low flow conditions as a result of an inadvertent PSV lift; operation of a process heater beyond the temperature limits; temporary operation during a partial shutdown; temporary operation for on-line steam out process; and startup after a partial shutdown.

71. By failing to develop and/or implement written operating procedures that provide clear instructions for conducting certain operating activities applicable to Respondent's Coker Unit and Crude Unit operations at the Facility, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.69(a).

COUNT XI

Failure to Develop and Implement Written Operating Procedures that Address the Consequences of Deviations and the Steps to Avoid or Correct the Deviation

72. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

73. 40 C.F.R. § 68.69(a)(2) requires the Respondent to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements: (i) consequences of deviation; and (ii) steps required to correct or avoid deviation.

74. In operating procedures such as but not limited to "APS Crude for Hot Restart," "Pipestill Emergency Shutdown," "Hydroblast Instrument Tap," "Power Failure," "Diesel Hydrotreater Unit Electrical Power Failure," "Naphtha Reformer Loss of Electrical Power," "Fluid Catalytic Power Failure," and for units such as but not limited to the Crude Unit, Coker Unit, Alkylation Unit,

Hydrotreating Units, Reformer Unit and FCCU, the consequences of deviation and steps required to correct or avoid the deviations were not addressed directly in the operating procedures, but rather were maintained as separate documents not referenced in the procedures.

75. By failing to develop and implement clear operating procedures that address the consequences of deviations and the steps to avoid or correct the deviation, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.69(a)(2).

COUNT XII

Failure to Develop and Implement Written Operating Procedures that Address the Hazards of the Materials, Control Measures to be Taken, and the Correct Personnel Protective Equipment Required

76. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

77. 40 C.F.R. § 68.69(a)(3) requires that the owner or operator develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address safety and health considerations: (i) properties of, and hazards presented by, the chemicals used in the process; (ii) precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment; and (iii) control measures to be taken if physical contact or airborne exposure occurs.

78. In operating procedures such as but not limited to "APS Crude for Hot Restart," "Pipestill Emergency Shutdown," "Hydroblast Instrument Tap," "Power Failure," "Diesel Hydrotreater Unit Electrical Power Failure," "Naphtha Reformer Loss of Electrical Power," "Fluid Catalytic Power Failure," and for units such as but not limited to the Crude Unit, Coker Unit, Alkylation Unit, Hydrotreating Units, Reformer Unit and FCCU, the properties of, and hazards presented by, the

chemicals used in the process; precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment; and control measures to be taken if physical contact or airborne exposure occurs were not addressed directly in the procedures but rather were maintained as separate documents not referenced in the procedures.

79. By failing to address properties of, and hazards presented by, the chemicals used in the process; precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment; and control measures to be taken if physical contact or airborne exposure occurs in the operating procedures, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.69(a)(3).

COUNT XIII

Failure to Make All Operating Procedures Accessible to Operators

80. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

81. 40 C.F.R. § 68.69(b) requires the owner or operator to make operating procedures readily accessible to employees who work in or maintain a process.

82. Respondent's practice of maintaining "controlled access" operating procedures limited employees' access to some operating procedures, including normal startup and normal shutdown procedures.

83. By failing to make "controlled access" operating procedures readily available to employees who work in or maintain the process, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.69(b).

COUNT XIV

Failure to Annually Certify that All Operating Procedures are Current and Accurate

84. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

85. 40 C.F.R. § 68.69(c) requires the owner or operator to review the operating procedures as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

86. Respondent did not annually certify controlled access operating procedures as current and accurate**,** including normal start up and shut down procedures.

87. By failing to annually certify that all of its operating procedures were current and accurate, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.69(c).

COUNT XV

Failure to Conduct Frequent Inspections and Testing Related to Mechanical Integrity

88. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

89. 40 C.F.R. § 68.73(d)(3) requires the owner or operator to perform inspection and testing on process equipment, following recognized and generally accepted good engineering practices at a frequency consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience, and to document each inspection and test that has been performed on process equipment. The

documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

90. Respondent failed to document inspection and testing of a process heater low pass flow shutdown system at the frequency required in its documentation.

91. By failing to perform inspection and testing at a frequency consistent with its own requirements, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.73(d)(3).

COUNT XVI

Failure to Correct Deficiencies in Equipment Related to Mechanical Integrity

92. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

93. 40 C.F.R. § 68.73(e) requires the owner or operator to correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in 40 C.F.R. § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

94. Respondent failed to timely repair or replace malfunctioning thermowells/temperature monitoring locations in a process heater, prior to further use.

95. Respondent's failure to repair or replace malfunctioning thermowells/temperature monitoring locations prior to further use is a violation of CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.73(e).

COUNT XVII

Failure to Address Critical Recommendations from a Compliance Audit

96. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

97. 40 C.F.R. § 68.79 requires owners or operators to perform a compliance audit and certify that they have evaluated compliance with the provisions of the regulations in 40 C.F.R. Part 68 at least every three years to verify that procedures and practices developed under the regulations are adequate and are being followed.

98. 40 C.F.R. § 68.79(d) requires owners or operators to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

99. In 2014, Respondent performed a compliance audit of the Facility. Critical recommendations from this compliance audit, including recommendations to address outdated or missing PRV information, were not marked "closed" as of the time of EPA's inspections in 2019, and for some time afterwards.

100. By failing to promptly address the recommendations from its 2014 compliance audit, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.79(d).

COUNT XVIII

Failure to Perform an Incident Investigation and Failure to Perform an Adequate Incident Investigation

101. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.

102. 40 C.F.R. § 68.81(a) requires the owner or operator to investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.

103. 40 C.F.R. § 68.81(d) requires the owner or operator to prepare a report at the conclusion of the investigation with includes, at a minimum, the date of the incident, the date the investigation began, a description of the incident, the factors that contributed to the incident and any recommendations resulting from the investigation.

104. EPA found one instance where an investigation was not performed after an incident on or around November 5, 2018, when it was discovered that a PRV pilot line filter was installed upside-down since 2008, which, if failed open undetected for a long period of time could theoretically result in an environmental exceedance; and another incident on or around November 3, 2018, where an inadequate "five-why" investigation methodology was applied to an incident when a PRV malfunctioned, resulting in a failure to consider or document all factors that contributed to the incident.

105. By failing to perform an investigation of an incident and its failure to perform an adequate investigation of an incident, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.81(a) and (d).

D. CIVIL ADMINISTRATIVE PENALTY

106. EPA proposes that Respondent be assessed, and Respondent agrees to pay **ONE MILLION, TWO HUNDRED TWENTY-FOUR THOUSAND FIVE HUNDRED FIFTY DOLLARS ($1,224,550)**, as the civil administrative penalty for the violations alleged herein.

107. The proposed penalty was calculated in accordance with the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(l), 112(r)(7), and 40 C.F.R. Part 68" dated June 2012,

and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. ADMISSIONS AND WAIVER OF RIGHTS

108. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section H of this CA/FO; (iv) waives any right to contest the allegations contained in Section C of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CA/FO.

109. EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

110. This settlement shall only resolve respondent's liability for Federal civil penalties for the violations and facts alleged in this CA/FO.

111. This CA/FO will not be construed to create rights in, or grant any cause of action to, any third party not party to this CA/FO.

F. PARTIES BOUND

112. This CA/FO shall apply to and be binding upon Respondent, and its successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I) have been paid, the conditions under section G have been completed, and any delays in performance and/or stipulated penalties have been resolved.

113. No change in ownership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

114. Until all the requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

115. The undersigned representative hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. CONDITIONS

116. All submissions to EPA required in this section shall be in writing and sent to Don Nixon, electronically at nixon.donald@epa.gov.

117. All certifications shall be signed by an authorized representative of Respondent. If a condition directs Respondent to certify facts to EPA, Respondent shall submit a written statement containing the following language: "The undersigned hereby certifies under penalty of law, and based on information and belief formed after reasonable inquiry, that the statements and information herein and all supporting documentation are true, accurate, and complete."

118. If Respondent is unable to complete any of the conditions required in this Section within the associated schedule, Respondent shall submit a written request for a modification, including the basis for the request, to EPA. Respondent shall submit this request within seven (7) days of identifying a need for a modification. Based on this request, EPA may in its sole discretion grant or deny, in full or in part, the request for modification.

119. Respondent is responsible for the satisfactory completion of the conditions described in Paragraphs 122–126.

120. After receipt of documentation supporting conditions completion, EPA will notify the Respondent, in writing, regarding: (a) any deficiencies in the conditions along with a grant of fourteen (14) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the conditions have been completed satisfactorily. If a dispute exists as to the satisfactory completion of these conditions, they will be addressed in accordance with Section L of this CA/FO.

121. Progress Reports. Within three (3) months of the Effective Date of the CA/FO, and every six months thereafter until completion of all Conditions of this CA/FO, Respondent shall submit a progress report to EPA ("Progress Report"). Each Progress Report shall describe all significant developments regarding Respondent's execution of Section G during the preceding reporting period, including the actions performed and any problems encountered, all significant developments during the current reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

122. By September 20, 2023, Respondent will update the global node of the Flare and Chemical Storage Utilities PHA and Coker PHA to analyze the hazards of power disruptions more specifically to include refinery-wide total power loss.

123. By January 31, 2024, Respondent will provide EPA with the first annual certification of operating procedures, emergency operating procedures, and controlled access operating procedures.

124. By September 25, 2024, Respondent will provide EPA with certification that all PSI is updated and complete for all hydrocarbon relief valves.

125. By June 26, 2025, Respondent will provide EPA with certification that the following hydrocarbon relief valves to a flare system are modified: SV-1301, SV-173A, SV-194A, SV-217,

SV-2231, SV-2241A, SV-2241B, SV-3920, SV-3930A, SV-3930B, SV-436A/B, SV-501A/B/C, SV-513, and SV-606.

126. By September 25, 2024, Respondent will provide EPA with certification that all analyses of hydrocarbon relief valves including "screenings" and "validations" were completed in accordance with API STD 520 Part 1 10th Ed. Oct 2020, API STD 520 Part 2 7th Ed. Sept 2020, API STD 521 7th Ed. April 2021, and ASME BPVC sections VIII & XIII 2021 by June 26, 2024.

H. PAYMENT OF CIVIL PENALTY

127. Respondent consents to the assessment of and agrees to pay civil administrative penalties of **ONE MILLION, TWO HUNDRED TWENTY-FOUR THOUSAND FIVE HUNDRED FIFTY DOLLARS ($1,224,550)** , in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), alleged in Section C above.

128. Within ninety (90) days of the Effective Date, Respondent shall pay the assessed penalty according to the terms of this CA/FO.

129. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the appropriate EPA docket number of this action. Payment shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White (301-887-6548)
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 31006
CTX Format

Online Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter "sfol.l" in the search field
Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
r9hearingclerk@epa.gov

And

Donald Nixon
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
Hawthorne Street
San Francisco, CA 94105
Nixon.Donald@epa.gov

130. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to pay the penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

131. The penalties specified in this CA/FO shall represent civil administrative penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

132. In the event that Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: ONE THOUSAND DOLLARS ($1,000) per

day for the first to fifteenth day of delay, TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS ($5,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under Section G of the CA/FO and within the specified time schedules in and approved under this CA/FO.

133. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section G during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (2) with respect to a decision by the EPA Management Official designated in Paragraph 148 of Section L (Dispute Resolution), during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing shall prevent the simultaneous accrual of separate penalties for separate violations of this CA/FO.

134. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section H of the CA/FO.

135. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. EPA reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

136. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

137. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

J. FORCE MAJEURE

138. "*Force majeure*," for purposes of this CA/FO, is defined as any event arising from causes beyond the control of Valero, of any entity controlled by Valero, or of Valero's contractors, that delays or prevents the performance of any obligation under this CA/FO despite Valero's best efforts to fulfill the obligation. The requirement that Valero 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 potential *force majeure* event (a) as it is occurring and (b) following the potential *force majeure*, such that the delay and any adverse effects of the delay are minimized. "*Force Majeure*" does not include Valero's financial inability to perform any obligation under this CA/FO.

139. If any event occurs or has occurred that may delay the performance of any obligation under this CA/FO, as to which Valero intends to assert a claim of *force majeure*, Valero will provide notice orally or by electronic transmission to EPA within five (5) days of when Valero first knew, or by the exercise of due diligence should have known, that the event would cause a delay. Within fifteen (15) days thereafter, Valero will 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; Valero's rationale for attributing such delay

to *force majeure*; and a statement as to whether, in the opinion of Valero, the delay in performance of an obligation under this CA/FO resulting from such event may cause or contribute to an endangerment to public health, welfare, or the environment ("15-Day *Force Majeure* Notice"). Valero will include with any written *Force Majeure* Notice documentation supporting the claim that the delay was attributable to *force majeure*. Failure to substantially comply with the above requirements will preclude Valero from asserting any claim of *force majeure* for that event for the period of time in which Valero has failed to comply with the notice requirements, and for any additional delay caused by such failure. Valero will be deemed to know of any circumstances of which Valero, any entity controlled by Valero, or Valero's contractors knew or should have known. If EPA agrees that the delay or anticipated delay is attributable to *force majeure*, it will notify Valero in writing, within 15 days of receipt of Valero's notice, and the time for performance of the obligations under this CA/FO that are affected by *force majeure* 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 *force majeure* will not, of itself, extend the time for performance of any other obligation. EPA will notify Valero in writing of the length of the extension, if any, for performance of the obligations affected by *force majeure*. If EPA does not agree that the delay or anticipated delay has been or will be caused by *force majeure*, EPA will notify Valero in writing of its decision within 15 days of receipt of Valero's notice.

140. If EPA does not respond within the timeframe above or if EPA does not agree that the delay or anticipated delay has been or will be caused by *force majeure,* Valero may elect to invoke the dispute resolution process set forth in Section L. Valero must do so no later than 30 days after: (a) receipt of EPA's notice of decision regarding Valero's *force majeure* claim; or (b) EPA fails to provide a written response within 30 days after receipt of Valero's *Force Majeure* Notice.

K. RESERVATION OF RIGHTS

141. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory, or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under the CAA, or any other statutory, regulatory, or common law enforcement authority in the United States.

142. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA, or any other applicable local, state, tribal, or federal laws and regulations. This CA/FO is not intended to be, nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, tribal, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state, or local permit.

143. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Respondent's full compliance with this CA/FO, including compliance with the conditions stated in Section G, shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this CA/FO.

144. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

L. DISPUTE RESOLUTION

145. Unless otherwise expressly provided for in this CA/FO, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes under this CA/FO. The Parties shall attempt to resolve any disagreements concerning this CA/FO expeditiously and informally.

146. If Respondent objects to any EPA action taken pursuant to this CA/FO, including EPA finding that Respondent has not met its obligations under the Conditions section of this CA/FO, it shall notify EPA in writing of its objection(s) within seven (7) days. EPA may, in its discretion, submit a response to the objection to Respondent no later than seven (7) days after receipt of Respondent's objection. EPA and Respondent shall have 21 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

147. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties and ratification by the Regional Judicial Officer, be incorporated into and become an enforceable part of this CA/FO.

148. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision.

149. Respondent's obligations under the Section G of this CA/FO shall not be tolled by submission of any objection.

M. NOTICES

150. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this CA/FO, they shall be made in writing and addressed as follows, with a courtesy copy by email (except that attachments that are too voluminous to email must be copied onto other electronic media and sent by mail):

- Kim Ronan, Kim.Ronan@valero.com
- April Twu, April.Twu@valero.com
- Parker Wilson, Parker.Wilson@valero.com
- Devon Downs, Devon.Downs@farleyllp.com
- Rick Sakow, Sakow.Rick@epa.gov
- Donald Nixon, Nixon.Donald@epa.gov
- Matthew K. Trawick, Trawick.Matthew@epa.gov

151. With regard to notices under Section I (Stipulated Penalties), any party may, by written notice to the other parties, change its designated notice recipient or notice address provided above.

152. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this CA/FO or by mutual agreement of the parties in writing.

N. MISCELLANEOUS

153. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

154. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

155. Each party to this action shall bear its own costs and attorneys' fees.

156. Respondent consents to entry of this CA/FO without further notice.

O. EFFECTIVE DATE

157. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

Respondent Valero Refining Company - California

DATE: 3/30/23

BY: _____
Joshua Tulino
Vice-President and General Manager

Complainant United States Environmental Protection Agency, Region IX

BY: AMY MILLER-BOWEN
Digitally signed by AMY MILLER-BOWEN
Date: 2023.03.30 14:27:37 -07'00'
Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order ("CA/FO") in the Matter of Valero Refining Company - California (Docket Nos. CAA (112r) 09-2023-0004 be entered and that Respondent pay a civil penalty of **ONE MILLION, TWO HUNDRED TWENTY-FOUR THOUSAND FIVE HUNDRED FIFTY DOLLARS ($1,224,550)** due within ninety (90) days from the Effective Date of this CA/FO, and implement the conditions described in Section G, in accordance with all terms and conditions of this CA/FO.

STEVEN JAWGIEL

Digitally signed by STEVEN JAWGIEL
Date: 2023.03.30 16:45:56 -07'00'

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original copy of the Consent Agreement & Final Order in the matter of Valero Benicia Refinery, Valero Refining Company – California (Docket No. CAA(112r)-09-2023-0004) was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by electronic mail to:

RESPONDENT

Parker Wilson
Vice President
Environmental, Safety and Regulatory Affairs Law
The Valero Companies
One Valero Way
San Antonio, TX 78249
Parker.Wilson@valero.com

COMPLAINANT

Matthew Trawick
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Trawick.Matthew@epa.gov

Tu, Ponly
Digitally signed by Tu, Ponly
Date: 2023.03.30 16:53:07 -07'00'

Ponly J. Tu
Regional Hearing Clerk
U.S. EPA, Region IX
75 Hawthorne Street, 12th Floor
San Francisco, CA 94105