

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF

Valero Refining Company-New Jersey,

Respondent

In a proceeding under Section 113(d)  
of the Clean Air Act, 42 U.S.C. § 7413(d):

**CONSENT AGREEMENT  
AND  
FINAL ORDER  
CAA-02-2010-1223**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGION 2  
2010 SEP 17 P 2:19  
REGIONAL HEARING  
CLERK

**Preliminary Statement**

The United States Environmental Protection Agency (EPA) issues this Consent Agreement and attached Final Order (CAFO) under the authority of 42 U.S.C. § 7413(d), Section 113(d) of the Clean Air Act, 42 U.S.C. § 7401 et seq. (CAA or Act) and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in this matter, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2, is delegated the authority to issue administrative Complaints and Consent Agreements brought pursuant to Section 113(d) of the Act on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands. The Regional Administrator of EPA Region 2

is also delegated the authority to execute Final Orders issued pursuant to Section 113(d) of the Act. In order to initiate this administrative action against Valero Refining Company-New Jersey (Valero or Respondent), EPA requested a waiver, from the United States Department of Justice (DOJ), of the CAA Section 113(d) restriction on EPA's authority to initiate an administrative action alleging violations that occurred more than 12 months prior to initiation of such action. On September 18, 2009, DOJ granted EPA's request.

In accordance with §§ 22.13(b) and 22.18(b), EPA and Respondent enter into this Consent Agreement and propose the attached Final Order to resolve the violations alleged in the Conclusions of Law section of this Consent Agreement.

In this action, EPA finds that Valero, at its Paulsboro, NJ facility (Facility), violated Section 608 and title V of the Act, and requirements of 40 C.F.R. Part 82, Subpart F, the Recycling and Emission Reduction regulations (Refrigerant Regulations), promulgated pursuant to Sections 114 and 608 of the Act, and conditions in the Facility's title V Operating Permit, which includes applicable requirements of the Refrigerant Regulations.

For purposes of this proceeding, and to avoid the expense of protracted litigation, Respondent: (1) admits that EPA has jurisdiction over the subject matter as alleged herein; (2) neither admits nor denies specific factual allegations contained in the Findings of Fact and Conclusions of Law in this Consent Agreement; (3) consents to the terms of agreement set forth in this Consent Agreement; and (4) consents to the issuance of the attached Final Order.

## **Statutory and Regulatory Background**

1. Section 113 of the Act authorizes the Administrator of EPA to issue an administrative penalty order, in accordance with Section 113(d) of the Act, against any person that has violated or is in violation of the Act.
2. Section 114 of the Act authorizes the Administrator to require owners or operators of emission sources to submit specific information regarding facilities, establish and maintain records, make reports, sample emission points, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.
3. Section 302(e) of the Act defines the term "person" as an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department or instrumentality of the United States and any other agent or employee thereof.
4. Section 608 of the Act requires the Administrator to promulgate regulations to reduce the use and emission of class I and class II substances to the lowest achievable level and maximize the recapture and recycling of such substances.
5. On May 14, 1993, under the authority of Sections 114 and 608 of the Act, EPA promulgated the Refrigerant Regulations. 58 Fed. Reg. 28712 (May 14, 1993).
6. The purpose of the Refrigerant Regulations is to reduce emissions of class I and class II refrigerants and their substitutes to the lowest

achievable level by maximizing recapture and recycling of such refrigerants during the service, maintenance, repair, and disposal of appliances. 40 C.F.R. § 82.150(a).

7. Pursuant to 40 C.F.R. § 82.150(b), the Refrigerant Regulations apply to any person servicing, maintaining, or repairing appliances.
8. 40 C.F.R. 82.152 defines "person" as any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe, and any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof.
9. 40 C.F.R. § 82.152 defines "refrigerant" as, for purposes of the Refrigerant Regulations, any substance consisting in part or whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect.
10. Class I substances are listed in 40 C.F.R. Part 82, Subpart A, Appendix A.
11. Class II substances are listed in 40 C.F.R. Part 82, Subpart A, Appendix B.
12. Monochlorodifluoromethane, also known as R-22 or HCFC-22, is listed in 40 C.F.R. Part 82, Subpart A, Appendix B.
13. 40 C.F.R. § 82.152 defines "appliance" as any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

14. 40 C.F.R. § 82.152 defines “follow-up verification test,” in part, for the purposes of 40 C.F.R. § 82.156(i), as those tests that involve checking the repairs within thirty (30) days of the appliances returning to normal operating characteristics and conditions.
15. 40 C.F.R. § 82.152 defines “full charge,” in part, as the amount of refrigerant required for normal operating characteristics.
16. 40 C.F.R. § 82.152 defines “industrial process refrigeration” (IPR) appliances, in part, for the purposes of 40 C.F.R. § 82.156(i), as complex customized appliances used in the petrochemical industry.
17. 40 C.F.R. § 82.152 defines “initial verification test,” for the purposes of 40 C.F.R. § 82.156(i), as those leak tests that are conducted as soon as practicable after a repair is complete.
18. 40 C.F.R. § 82.152 defines “leak rate” to include among other things, “the rate at which an appliance is losing refrigerant, measured between refrigerant charges. The leak rate is expressed in terms of the percentage of the appliance’s full charge that would be lost over a 12-month period if the current rate of loss were to continue over that period.”
19. 40 C.F.R. § 82.152 defines “normally containing” as the quantity of refrigerant within the appliance or appliance component when the appliance is operating with a full charge of refrigerant.
20. Pursuant to 40 C.F.R. § 82.156(i)(2), an owner or operator of an IPR appliance normally containing more than 50 pounds of refrigerant must have leaks repaired in accordance with 40 C.F.R. § 82.156(i)(9), if the

appliance is leaking at a rate such that the loss of refrigerant will exceed 35% of the total charge during the 12-month period. Repairs must bring annual leak rates to below 35% during a 12-month period.

21. Pursuant to 40 C.F.R. § 82.156(i)(3), an owner or operator, upon conclusion of repairs to leaking IPR appliance, must perform an initial verification test demonstrating that the leaks have been repaired and perform a follow-up verification leak test within thirty (30) days following the initial verification test.
22. Pursuant to 40 C.F.R. § 82.156(i)(9), an owner or operator of an IPR appliance must repair leaks pursuant to § 82.156(i)(2) within thirty (30) days after discovery, or within thirty (30) days after when the leaks should have been discovered if the owner intentionally shielded itself from information that would have revealed a leak, unless granted additional time pursuant to § 82.156(i).
23. Pursuant to 40 C.F.R. § 82.166(k), an owner or operator of an IPR appliance normally containing fifty (50) or more pounds of refrigerant must keep servicing records documenting the date, type of service, and quantity of refrigerant added.
24. Section 502(a) of the Act provides that after the effective date of any permit program approved or promulgated pursuant to title V of the Act, it shall be unlawful for any person to violate any requirement of a permit issued under title V of the Act or to operate a title V affected source,

except in compliance with a permit issued by a permitting authority under title V of the Act.

25. Section 502 of the Act, 42 U.S.C. § 7661a, required EPA to promulgate regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency and sets forth the procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs.
26. 40 C.F.R. Part 70, promulgated pursuant to title V of the Act, sets forth corresponding minimum requirements for state operating permit programs.
27. 40 C.F.R. Part 71 sets forth the comprehensive federal air quality operating permits program consistent with the requirements of title V of the Act, and defines the requirements and the corresponding procedures by which EPA will issue title V permits.
28. Section 503(b)(2) of the Act provides that the regulations promulgated pursuant to Section 502(b) of the Act, shall include requirements that the permittee periodically (but no less frequently than annually) certify that its facility is in compliance with any applicable requirements of the title V Permit and that the permittee promptly report any deviations from the permit requirements to the permitting authority.
29. Pursuant to Section 502(e) of the Act, EPA maintains its authority to enforce title V Permits issued by the State.

30. Section 502(d)(1) of the Act requires each State to develop and submit, to the Administrator, a permit program meeting the requirements of title V of the Act.
31. In accordance with Section 502(d)(1) of the Act, the New Jersey Department of Environmental Protection (NJDEP) developed and submitted N.J.A.C. 7:27-22 (the NJ title V Operating Permit Program) to meet the requirements of title V of the Act and 40 C.F.R. Part 70, promulgated pursuant to Section 502(b) of the Act. This submission included New Jersey Administrative Code (N.J.A.C.) 7:27-22-19(f), which requires that all New Jersey title V Operating Permits include a provision that requires annual compliance certifications be submitted to EPA and to New Jersey, the permitting authority.
32. EPA granted interim approval of the New Jersey title V Operating Permit Program, N.J.A.C. 7:27-22, which has an effective date of June 17, 1996. 61 Fed. Reg. 24,715 (May 16, 1996).
33. EPA granted final approval to the New Jersey title V Operating Permit Program, which has an effective date of November 30, 2001. 66 Fed. Reg. 63,168 (Dec. 6, 2001).

#### **Findings of Fact**

34. Valero is incorporated under the laws of the State of Delaware.
35. During at least 2003 through 2004, Valero owned and/or operated a petroleum refinery, located at 800 Billingsport Road, Paulsboro, NJ.



36. During at least 2003 through 2004, Valero owned and operated an IPR appliance at the petroleum refinery, which it identified as D/B Model D8 (IPR D8), and that had a capacity of 900 pounds of R-22.
37. On February 12, 2002, the NJDEP issued Valero an initial Title V Operating Permit (Title V Permit). NJDEP has issued Valero numerous modified versions of the Title V Permit since that date.
38. Each of the Facility's Title V Permits incorporates as an applicable requirement the title V requirement to submit annual compliance certifications to the NJDEP, the permitting authority and to EPA.
39. Each of the Facility's Title V Permits incorporates the Refrigerant Regulations as applicable requirements.
40. EPA conducted a review of Facility related records (EPA File Review), which included Valero's service records, a Valero record describing service procedures relating to IPR D8, and the Facility's title V annual compliance certification for the year 2004.
41. During the EPA File Review, EPA found that on September 15, 2003 there was a leak episode where the annualized leak rate of IPR D8 was greater than 35% of the full charge of R-22, and that within thirty (30) days of September 15, 2003, Respondent did not repair leak(s) to bring the annualized leak rate to below 35%.
42. During the EPA File Review, EPA found that the Respondent failed to keep complete records detailing the nature and type of initial and follow-up verifications tests for the leak episode identified in paragraph 41, above.

43. During the EPA File Review, EPA found that on February 21, 2004 there was a leak episode where the annualized leak rate of IPR D8 was greater than 35% of the full charge of R-22, and that within thirty (30) days of February 21, 2004, Respondent did not repair leak(s) to bring the annualized leak rate to below 35%.
44. During the EPA File Review, EPA found that the Respondent did not keep complete records detailing the nature and type of initial and follow-up verification tests for the leak episode identified in paragraph 43, above.
45. During the EPA File Review, EPA found that on June 7, 2004, there was a leak episode where the annualized leak rate of IPR D8 was greater than 35% of the full charge of R-22.
46. During the EPA File Review, EPA found that the Respondent did not keep complete records detailing the nature and type of any initial and follow-up verification tests performed regarding the leak episode identified in paragraph 45, above.
47. During the EPA File Review, EPA found that on August 5, 2004, there was a leak episode where the annualized leak rate of IPR D8 was greater than 35% of the full charge of R-22.
48. During the EPA File Review, EPA found that the Respondent did not keep complete records detailing the nature and type of service regarding the leak episode identified in paragraph 47, above.
49. During the EPA File Review, EPA found that Valero did not identify, in the Facility's title V annual certification for the reporting period of January 1,

2003 through December 31, 2003, violations of the Refrigerant Regulations and of the condition in the Title V Permit which incorporates the Refrigerant Regulations as applicable requirements.

50. Valero generally contested EPA's findings above, and provided information to EPA which Valero contends supports Valero's position.

#### **Conclusions of Law**

51. From the Findings of Fact set forth above, EPA finds that Respondent is a "person," within the meaning of Section 302(e) of the Act, and 40 C.F.R. § 82.152 of the Refrigeration Regulations.
52. From the Findings of Act set forth above, EPA finds that as the owner or operator of an IPR appliance that normally contains over 50 pounds or more of a class II refrigerant, Respondent is subject to the requirements of Sections 114 and 608 of the Act and the Refrigerant Regulations.
53. From the Findings of Fact set forth above, EPA finds that Respondent's failures to reduce the annualized leak rate of IPR D8, by repairing the appliance within 30 days of the leak episodes that commenced on September 15, 2003 and February 21, 2004, is a violation of 40 C.F.R. § 82.156(i)(2) and (i)(9) and the Facility's Title V Permit, which incorporates, the Refrigerant Regulations as applicable requirements.
54. From the Findings of Fact set forth above, EPA finds that each of Respondent's failures to keep service records documenting initial and final verifications for the leak episodes that commenced on September 15, 2003, February 21, 2004, June 7, 2004, and August 5, 2004, is a violation

of 40 C.F.R. § 82.166(k) and the Facility's Title V Permit which incorporates the Refrigerant Regulations as applicable requirements.

55. From the Findings of Fact forth above, EPA finds that Respondent did not submit a complete and accurate Title V annual certification for the reporting period January 1, 2003 through December 31, 2003, in violation of N.J.A.C. 7:27-22.19(f) and the Facility's Title V Permit, which includes the Title V annual compliance certification as an applicable requirement.
56. In accordance with the Findings of Fact and Conclusions of Law set forth above, EPA finds that each of Respondent's violations of 40 C.F.R. § 82.156(i)(2) and (i)(9) is a violation of Section 608 of the Act.
57. In accordance with the Findings of Fact and Conclusions of Law set forth above, EPA finds that each of Respondent's violations of 40 C.F.R. § 82.166(k) is a violation of Sections 114 and 608 of the Act.
58. In accordance with the Findings of Fact and Conclusions of Law set forth above, EPA finds that each of Respondent's violations of the Title V Permit is a violation of title V of the Act.
59. In accordance with the Findings of Fact and Conclusions of Law set forth above, EPA finds that Respondent's violations of N.J.A.C. 7:27-22.19(f) and the Title V Permit are violations of the New Jersey Title V Operating Permit Program, and Section 114 and title V of the Act.

### Consent Agreement

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

60. Respondent shall pay a civil penalty, pursuant to Section 113(d) of the Act, in the amount of **forty-seven thousand, eight hundred and sixty-nine dollars** (\$47,869) either by corporate, cashiers', or certified check within thirty (30) days from the date of issuance of the attached Final Order (Due Date). Respondent shall: (1) clearly type or write the docket number (CAA-02-2010-1223) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America;" and (3) send the check to

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent shall sent notice of payment to the following individuals:

Kenneth Eng, Air Compliance Branch Chief  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2  
290 Broadway – 21st Floor  
New York, New York 10007

and

Flaire Hope Mills, Air Branch Chief  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 2  
290 Broadway – 16th Floor  
New York, New York 10007

61. If Respondent fails to make full and complete payment of the \$47,869 penalty that is required by this Consent Agreement and attached Final Order, this case may be referred by EPA to the DOJ and/or the United States Department of the Treasury for collection. In such action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C.

§ 3717, Respondent shall pay the following amounts:

- i. Interest. If Respondent fails to make payment, or makes partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- ii. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- iii. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

62. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act set forth herein.

63. Respondent has read the Consent Agreement and consents to the terms and issuance as a Final Order.

64. This Consent Agreement and attached Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Air Act for the violations alleged in this Consent Agreement. Nothing in this Consent Agreement and attached Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or to affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Compliance with this Consent Agreement and attached Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.
65. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives its right to appeal the attached Final Order.
66. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

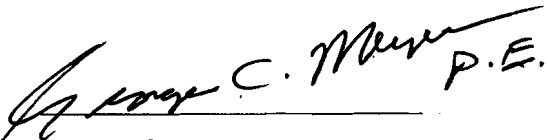
67. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in this action resolved by this Consent Agreement and attached Final Order.
68. The Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.
69. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

For Respondent:

For Complainant:



Jack Eisenmann  
Vice President and General Manager  
Valero Refining Company-New Jersey

 P.E.

Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
United States Environmental  
Protection Agency, Region 2

Date 8-25-2010

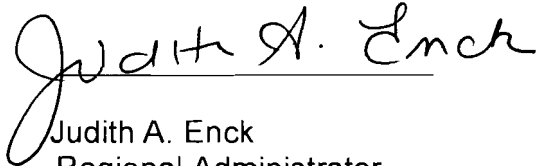
Date 9/2/10



FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of Valero Refining Company-New Jersey, CAA-02-2010-1223. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

DATE: Sept. 14, 2010



Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2

CERTIFICATE OF SERVICE

I certify that the attached Consent Agreement and Final Order (and its enclosures), dated 9/16/2010 were sent in the following manner to the addressees listed below.

Original and One Copy Delivered by hand to Regional Hearing Clerk's Office:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Copy by Hand to:

Evans Stamatakis  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Air Branch, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

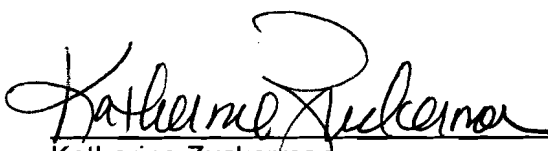
Copies by (*Certified*) Mail to:

Elizabeth Bourbon, Esq.  
Managing Counsel  
Environmental, Safety and  
Regulatory Affairs Law  
The Valero Companies  
One Valero Way  
San Antonio, TX 78249

*and*

Bart E. Cassidy, Esq.  
Manko, Gold, Katcher & Fox, LLP  
401 City Avenue, Suite 500  
Bala Cynwyd, PA 19004

Dated: September 16, 2010

  
Katherine Zuckerman  
Air Branch Secretary  
U.S. Environmental Protection Agency  
Office of Regional Counsel, Region 2