

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

**** FILED ****
30SEP2016 - 12:59PM
U.S.EPA - Region 09

In the matter of)	U.S. EPA Docket No.
)	RCRA-09-2016- 0008
Valero Refining Company - California)	EPCRA-09-2016- 0003
)	
)	
RCRA EPA ID No. CAD063001770)	CONSENT AGREEMENT AND
TRI ID No. 94510XXNCS3400E)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
<u>Respondent.</u>)	22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1); Section 325(c) of the Emergency Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c); and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22.
2. Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is Valero Refining Company - California ("Respondent" or "Valero").
3. Respondent owns and operates a facility located at 3400 East 2nd Street, in Benicia, California, 94510 (the "Facility"). The Facility's RCRA EPA Identification Number is CAD063001770. Its EPCRA TRI Identification Number is 94510XXNCS3400E. Respondent operates the Valero Benicia Refinery, where it produces petroleum hydrocarbon products, by-products, and intermediates.
4. On May 19 through 23, 2014, inspectors from the EPA conducted a multimedia compliance investigation at the Facility. The purpose of the inspection was to determine the Facility's compliance with applicable regulations adopted by the California authorized program under RCRA in the California Code of Regulations ("C.C.R."), Title 22, Division 4.5 and the California Health and Safety Code, Division 20; and EPCRA Section 313 and the regulations at 40 C.F.R. Part 372. Based upon the findings EPA

made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Respondent had violated EPCRA Section 313, 42 U.S.C. § 11023 and the California Health & Safety Code § 25100 *et seq.* and the regulations adopted pursuant thereto, as authorized by the United States.

5. This Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent failed to: (1) obtain a permit for disposal of hazardous waste, a violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1]; (2) determine if solid waste generated was hazardous, a violation of 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11]; (3) maintain and operate the facility to minimize the possibility of any unplanned release, a violation of 22 C.C.R. § 66262.34(a)(4) and 22 C.C.R. § 66265.31 [*see also* 40 C.F.R. § 262.34(a)(4) and 40 C.F.R. § 265.31]; (4) maintain records at the facility for calendar years 2010 and 2011, a violation of 40 C.F.R. § 372.10(c); and (5) submit accurate Toxic Chemical Release Inventory Reporting Forms, a violation of Section 313(g)(1)(B) of EPCRA, 42 U.S.C. § 11023(g)(1)(B), and 40 C.F.R. § 372.30(a). Respondent thereby violated Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations authorized pursuant thereto,¹ and Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing regulations set forth at 40 C.F.R. Part 372.

B. JURISDICTION

6. For the RCRA violations, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to § 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271 on August 1, 1992. The authorized hazardous waste program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State of California has been authorized for all the hazardous waste management regulations referenced in this CA/FO.
7. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
8. Respondent is the "operator" of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
9. Respondent is a "generator" of hazardous waste as defined in 22 C.C.R. § 66260.10 [40 C.F.R. § 260.10].

¹ All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States. Corresponding Federal citations are provided in brackets.

10. Respondent is or has been engaged in “storage” of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
11. Respondent generates and accumulates, or has generated and accumulated, materials that are “wastes” as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [*see also* 40 C.F.R. § 261.2].
12. At the Facility, Respondent generates and accumulates, or has generated and accumulated, “hazardous waste” as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include but are not limited to corrosive waste (D002), petroleum refinery primary oil/water/solids separation sludge (F037), petroleum refinery secondary oil/water/solids separation sludge (F038), and spent hydrotreating catalyst from petroleum refining operations (K171).
13. The Facility is a “facility” as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. § 372.3.
14. The Facility has 10 or more “full-time employees,” as that term is defined at 40 C.F.R. § 372.3.
15. The Facility is in a North American Industry Classification System Code 324, Petroleum and Coal Products Manufacturing, listed in 40 C.F.R. § 372.23.
16. At the Facility, Respondent manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in excess of the applicable threshold quantity of that chemical set forth in 40 C.F.R. § 372.25, including but not limited to greater than 25,000 pounds of benzene, toluene, ethylbenzene and xylene.
17. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
18. A violation of California’s authorized hazardous waste program, found at H&SC § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California’s authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
19. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a civil penalty and/or requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*

20. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the EPA Administrator to assess a penalty for violations of Section 313 of EPCRA, 42 U.S.C. § 11023.

21. The Administrator has delegated the authority under Section 3008 of RCRA and Section 325 of EPCRA to the EPA Regional Administrator for Region 9, who has re-delegated this authority to the EPA signatory below.

C. ALLEGED VIOLATIONS

COUNT I

Failure to obtain a permit for disposal of hazardous waste

22. Paragraphs 1 through 21 above are incorporated herein by this reference as if they were set forth here in their entirety.

23. 22 C.C.R. § 66270.1(c) requires that each person owning or operating a facility where hazardous waste is transferred, treated, stored, or disposed must have a permit. At the time of the inspection, Respondent did not have a permit or grant of interim status to dispose of hazardous waste under 22 C.C.R. § 66270.1(c) [*see also* 40 C.F.R. § 270.1(c)].

24. As a result of the inspection, EPA determined that Respondent discharged benzene-contaminated wastewater, RCRA D018 characteristic hazardous waste, into an unlined stormwater surface impoundment during self-diversion of wet weather flows on 14 occasions between 2011 and 2013. These discharges were not eligible for exemption under 22 C.C.R. § 66265.1(e)(11) [*see also* 40 C.F.R. § 265.1(c)(11)].

25. Therefore EPA alleges that Respondent disposed of hazardous waste without a permit, a violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].

COUNT II

Failure to maintain and operate the facility to minimize the possibility of an unplanned release

26. Paragraphs 1 through 25 above are incorporated herein by this reference as if they were set forth here in their entirety.

27. 22 C.C.R. § 66262.34(a)(4) and 22 C.C.R. § 66265.31 provide that facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment [*see also* 40 C.F.R. § 262.34(a) and 40 C.F.R. § 265.31].

28. During the CEI the EPA Inspectors observed several areas where there was staining on the ground, evidencing spillage.
29. Respondent acknowledged that there had been accidental releases of oily sludge, RCRA F037 hazardous waste, that was cleaned up promptly, but some staining was left in place around a Baker Tank, due to access issues.
30. Therefore EPA alleges that Respondent failed to operate its facility to minimize the possibility of a release of hazardous waste, and has violated 22 C.C.R. § 66262.34(a)(4) and 22 C.C.R. § 66265.31 [*see also* 40 C.F.R. § 262.34(a) and 40 C.F.R. § 265.31].

COUNT III

Failure to make a hazardous waste determination

31. Paragraphs 1 through 30 above are incorporated herein by this reference as if they were set forth here in their entirety.
32. 22 C.C.R. § 66262.11 states that a facility which generates waste, as defined by 22 C.C.R. § 66261.2, must determine if the waste is a hazardous waste [*see also* 40 C.F.R. § 262.11].
33. EPA determined that Respondent had pumped stormwater from the surface impoundment where Respondent had discharged RCRA D018 into a stormwater retention pond, used when extra stormwater capacity is needed.
34. Respondent failed to sample the wastewater pumped from the impoundment into the stormwater retention pond, thereby failing to determine if solid waste generated was hazardous.
35. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11].

COUNT IV

Failure to maintain records at the facility

36. Paragraphs 1 through 35 above are incorporated herein by this reference as if they were set forth here in their entirety.
37. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit annually to EPA and the State in which the facility is located a chemical release form published under Section 313(g) of EPCRA for each toxic chemical or toxic chemical category listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65 that it manufactured, processed or otherwise used if: (i) the facility has ten or more full-time

employees; (ii) the facility is in North American Industry Classification System Code 324110; and (iii) the facility manufactured, processed or otherwise used during the preceding calendar year the listed toxic chemical or toxic chemical category in excess of the threshold quantity established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25.

38. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a uniform Toxic Chemical Release Inventory Form (hereinafter referred to as a "Form R") for facilities that are subject to the reporting requirements of Section 313. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for activities involving a toxic chemical or toxic chemical category that occurred during a calendar year must be submitted on or before July 1 of the next year.
39. Pursuant to 40 C.F.R. § 372.10(a) and (b), each person subject to the reporting or notification requirements of 40 C.F.R. Part 372 must retain complete records (as specified in the regulations) for a period of three years from the date of the submission of a report under 40 C.F.R. § 372.30 or of a notification under 40 C.F.R. § 372.45, respectively.
40. These records include data supporting the determination of whether a threshold under 40 C.F.R. § 372.25 applies for each toxic chemical and the calculations of the quantity of each toxic chemical released to the environment or transferred to an off-site location.
41. Pursuant to 40 C.F.R. § 372.10(c), records retained under 40 C.F.R. Part 372 must be maintained at the facility to which the report applies or from which a notification was provided. Such records must be readily available for purposes of inspection by EPA.
42. For reporting years 2010 and 2011, Respondent did not have records relating to threshold determinations for benzene, toluene, ethylbenzene or xylene readily available at the Facility for purposes of inspection by EPA.
43. For reporting year 2010, Respondent did not have records supporting its calculations for fugitive emissions from wastewater readily available at the Facility for purposes of inspection by EPA.
44. By failing to maintain the requisite records at the Facility for reporting years 2010 and 2011, Respondent violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.10(c).

COUNT V

Failure to submit an accurate Form R

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

46. 40 C.F.R § 372.30(a) requires that for each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in § 372.25, § 372.27, or § 372.28 at its covered facility described in § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350-1).
47. Section 313(g)(1)(B) of EPCRA, 42 U.S.C. § 11023(g)(1)(B), provides that Form Rs must include a certification regarding the accuracy and completeness of the information provided therein.
48. Based on the inspection, EPA found Respondent failed to accurately report fugitive emissions data for two chemicals, cumene and ethylene, for reporting year 2010.
49. These inaccuracies constitute significant data quality errors and Respondent's failure to submit accurate Form Rs for these two toxic chemicals violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30(a).

D. CIVIL PENALTY

50. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as adjusted by the Debt Collection Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize a civil penalty of up to thirty-seven thousand, five hundred dollars (\$37,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, or Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) occurring after January 12, 2009 and before August 1, 2016. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the 2003 RCRA Civil Penalty Policy, and the 1992 Enforcement Response Policy for Section 313 of EPCRA, as amended April 12, 2001, EPA proposes that Respondent be assessed ONE HUNDRED FIFTY-SEVEN THOUSAND EIGHT HUNDRED DOLLARS as the civil penalty for the violations alleged herein.

E. ADMISSIONS AND WAIVERS OF RIGHTS

51. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

52. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

53. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and H has been paid in accordance with Section H, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.

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

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

G. COMPLIANCE TASKS

56. By no later than December 30, 2016, Respondent shall submit a work plan for piping modifications at the Facility so that discharges from the Diversion Area lift station can no longer flow (self-divert) to the Wastewater Treatment Plant retention ponds. Respondent has identified this lift station, which receives flows from the Lower Level Tank Farm area, as the most likely source of benzene concentrations that have been detected intermittently in storm-related self-diversions into the retention ponds.

57. By no later than June 30, 2017, Respondent shall complete the project described in Paragraph 56 above. Respondent shall notify EPA in writing within ten (10) working days after completion of the project, and submit documentation showing that the project is complete. Such documentation may include invoices, photos, contracts, or any other relevant materials.

58. From the Effective Date of the CA/FO until one year following completion of the project described in Paragraph 56, during storm events Valero shall sample wastewater discharged at the diversion canal, end of line (EOL) sampling point EOL-10.

59. Respondent shall sample the diversion canal at the beginning of each diversion event. If the diversion is continuous, Respondent shall sample the canal daily for the duration of the diversion.

60. Respondent shall continue to follow the current National Emissions Standards for Hazardous Air Pollutants (“NESHAP”) End of Line (“EOL”) monitoring protocol for benzene and utilize the existing Valero Benicia Refinery EOL Sample Check Sheet to record the collection of the samples.
61. Respondent shall continue to follow its existing Quality Assurance/Quality Control requirements, as follows: (1) where applicable, the sample must be collected through a cooler so the temperature is less than 50F degrees; (2) samples must be collected into a Volatile Organic Analysis (“VOA”) vial without air bubbles; (3) records must be kept for listing the name, date, time of the person collecting the sample and the temperature of the sample.
62. Respondent’s contract laboratory should continue to perform EPA Method 8260 BTEX (Benzene, Toluene, Ethylbenzene, m,p-Xylene, o-Xylene) analysis for these samples.
63. Respondent shall submit the sampling data to EPA within five (5) working days from the receipt from its contractor laboratory. Data shall be transmitted via electronic mail to Sharon Lin at lin.sharon@epa.gov.

H. PAYMENT OF CIVIL PENALTY

64. Respondent consents to the assessment of and agrees to pay a civil penalty of ONE HUNDRED FIFTY-SEVEN THOUSAND AND EIGHT HUNDRED DOLLARS (\$157,800.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
65. Respondent shall submit payment of the ONE HUNDRED FIFTY-SEVEN THOUSAND AND EIGHT HUNDRED DOLLARS (\$157,800.00) within thirty (30) calendar days of the Effective Date of this CA/FO in accordance with one of the options set forth below. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action.

Regular Mail:

Payment shall be made by certified or cashier's check payable to “Treasurer of the United States” and sent as follows:
US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

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"

Overnight Mail:
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):
Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:
This payment option can be accessed from the information below:
www.pay.gov
Enter "sfo1.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

66. At the time payment is made, a copy of the payment transmittal shall be sent to:

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

and

Sharon Lin (ENF 2-2) and Andrew Chew (ENF 2-2)
Enforcement Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

67. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.
68. The penalties specified in this CA/FO shall represent civil 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

69. In the event Respondent fails to (a) submit a payment to EPA by the time required in this CA/FO, or (b) complete tasks required by Section G above, Respondent shall pay stipulated penalties up to: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay; ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay; and ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day for each day of delay thereafter.
70. Prior to the date when Valero completes the project described in Paragraph 56, if Respondent discharges stormwater exceeding 0.5 mg/L benzene to any surface impoundment, Respondent shall pay a penalty of up to \$5,000 for each day of such discharge.
71. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
72. All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted as described in Paragraph 65.
73. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
74. 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.

75. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

J. CERTIFICATION OF COMPLIANCE

76. In executing this CA/FO, Respondent certifies under penalty of law to EPA that to its actual knowledge that (1) it has now fully completed and submitted to EPA all of the required Toxic Chemical Release Inventory Forms in compliance with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder; and (2) it is in compliance with all other EPCRA requirements applicable to the Facility.

77. In executing this CA/FO, subject to the provisions of Section G above, Respondent certifies under penalty of law to EPA that it has fully complied with RCRA Hazardous Waste Management requirements, 42 U.S.C. §§ 6921–6939e, and the federally authorized California hazardous waste management program including 22 C.C.R. §§ 66270.1 [*see also* 40 C.F.R. §§ 270.1], 22 C.C.R. § 66265.31 [*see also* 40 C.F.R. § 265.31], and 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11], that formed the basis for the violations alleged in this CA/FO.

78. This certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

K. RESERVATION OF RIGHTS

79. 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, except as to those civil penalties for the violations and facts alleged herein. 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. 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 RCRA or EPCRA (except as to those civil penalties for the violations and facts alleged herein); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); or any other statutory, regulatory or common law enforcement authority of the United States.

80. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA, EPCRA, or any other applicable local, State or federal laws and regulations.
81. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.
82. 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 or federal permits.

L. OTHER CLAIMS

83. Nothing in this CA/FO shall constitute or be construed as a release from nor an admission by Respondents of any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

M. MISCELLANEOUS

84. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
85. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
86. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

87. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date the Final Order, having been approved by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED.

9/27/16

Date

Donald C. Wilson

Name, Title: Donald C. Wilson, VP+ General manager
Valero Refining Co. - California

9/29/16

Date

Jose Jones

Jose Jones, Assistant Director
Enforcement Division
U.S. Environmental Protection Agency, Region 9

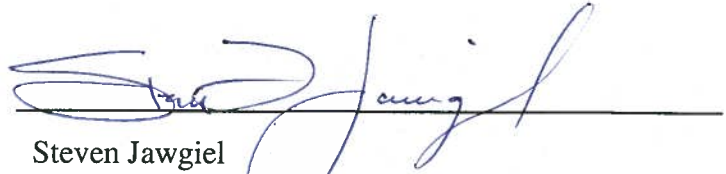
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-9 -2016-~~0008~~ and EPCRA-09-2016-~~0003~~) be entered and that Valero Refining Company - California pay a civil penalty of one hundred fifty seven thousand and eight hundred dollars (\$157,800.00) due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order. Payment must be made pursuant to Section H of the Consent Agreement.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

09/30/16

Date

A handwritten signature in blue ink, appearing to read "Steven Jawgiel", is written over a horizontal line.

Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order in the matter of Valero Refining Company – California with Docket # RCRA-09-2016-0008 /EPCRA-09-2016-0003 has been filed with the Regional Hearing Clerk, Region 9, and a copy was sent:

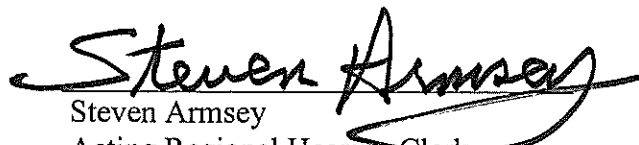
By Certified Mail, Return Receipt Requested to Respondent:

Mr. Christopher W. Howe
Director, Health, Safety, Environment & Government Affairs
Valero Benicia Refinery
3400 East Second Street
Benicia, California 94510-1005
Certified Mail No. 7009 0820 0001 3646 6332

Hand Delivered to:

Rebecca Sugerman
Office of Regional Counsel
U.S. EPA, Region 9, ORC-3
75 Hawthorne Street
San Francisco, CA 94105

Sept. 30, 2016
Date


Steven Armsey
Acting Regional Hearing Clerk
Office of Regional Counsel, Region 9