

CONCILIATION ORDER

Secretary's Order No. 2008-A-0051

re: The Premcor Refining Group Inc. – Frozen Earth Storage

This Conciliation Order (“Order”) is issued this 25th day of September, 2008 (“Effective Date”), by the Delaware Department of Natural Resources and Environmental Control (“DNREC”). This Order is issued to The Premcor Refining Group Inc. (“Premcor”) to require that Premcor address certain alleged noncompliance relating to the Frozen Earth Storage unit currently operated by Premcor at its petroleum refinery located in Delaware City, Delaware (“Refinery”). DNREC alleges Premcor has violated certain provisions of 7 *Del. C.* Chapters 60 and 77.

SECTION I. BACKGROUND AND FACTUAL FINDINGS

1. Premcor owns and operates the Delaware City Refinery, located at 4550 Wrangle Hill Road, Delaware City, Delaware. Premcor acquired the Refinery from Motiva Enterprises, L.L.C. (“Motiva”) on May 1, 2004.
2. The Refinery stores a mixture of propane and propylene in an in-ground storage cavern (hereafter “Frozen Earth Storage” or “FES”) with a maximum capacity of 495,000 barrels that was commissioned into service on or about November 8, 1966.
3. The liquid propane gas stored in the FES has other constituents. Premcor’s data from August 8, 2007, to September 13, 2007, indicated that the composition of the material

entering the FES was, on average, 65 volume percent propane, 35 volume percent propylene, and contained trace amounts of ethane (and lighter components) and butane (and heavier components). These volatile organic compounds are air pollutants as defined by Delaware law. All of these volatile organic compounds are leaking from the FES and evaporating into Delaware air. Propane and propylene are also covered flammable substances under 7 *Del. C.* and Chapter 77 and DNREC's Accidental Release Prevention ("ARP") Regulation.

4. The FES was designed on behalf of and commissioned into service by a prior Refinery owner on or about November 8, 1966. The design of the FES, identified as proprietary, involved the use of propane-chilled "freeze rings" to maintain a zone of frozen earth and groundwater to contain products at low pressures in an earthen storage cavern, which is topped by a carbon steel dome welded to a carbon steel ring extending to a depth of approximately eight feet below grade.

5. By letter dated April 27, 1965, the Delaware State Board of Health Air Pollution Authority issued Certificate of Approval #6502 to Tidewater Oil Company to construct and maintain the FES under authority of the Air Pollution Act and then-existing Regulation 1. On February 26, 1965, the Water Pollution Commission issued Certificate of Approval # 1965-14 to Tidewater Oil Company to construct and maintain the frozen earth facility.

6. A variety of reports documenting fugitive emissions from the FES were provided to DNREC in response to a request made after DNREC staff observed the emissions in September 2007 using a handheld FLIR infrared imaging device following up on a Premcor leak detection and repair report. Among the historic reports documenting the FES releases was a

1967 report prepared apparently for the prior Refinery owner, identifying fugitive emissions of hydrocarbon to the atmosphere shortly after the FES was commissioned into service. The fugitive emissions are thought to derive from a flaw in the original design of the unit. According to a report dated July 2002 and apparently prepared by Geosystems Consultants Inc., "Leakage through vadose zone (unsaturated) at the soil-skirt interface is highly likely. The vented gas will travel horizontally and vertically through the gravel and rock bed below the insulation blanket and escaping [sic] into air through preferable paths. We believe that this is the most likely reason of [sic] the continuing gas leak at the facility."

7. The FES has been operated continuously from the time of its commissioning in 1966 to the present. Premcor has informed DNREC that at the time it acquired the Refinery from Motiva in 2004, a routine maintenance program was in place to respond to visual indications of leaks by patching the soil surface in the vicinity of the perceived leak and this maintenance program was subsequently adopted by Premcor upon its acquisition of the Refinery

8. DNREC believes violations occurred because the FES has continued to leak propane and propylene into the atmosphere. DNREC believes that it was not informed of the results of studies conducted in 1992, 1994, 1995, 2002 and 2004 indicating continued leakage. On October 11, 2007, DNREC issued a Notice of Violation alleging generally that the FES lacks appropriate permitting authorization for fugitive emissions from the FES and that the fugitive emissions from the FES have not been quantified and reported. Additionally, besides violations for not reporting these air emissions, DNREC believes these continuous leaks represent a failure

of mechanical integrity under Premcor's risk management program that previous owners and Premcor have not addressed to date.

9. Although the recent commercial availability of handheld infrared camera technology now facilitates identification of where and when leaks are occurring, this technology cannot quantify fugitive emission rates from the FES. To date no industry standard or governmentally sanctioned methodology exists for quantifying fugitive emissions from a unit of this type.

10. On September 10, 2007, DNREC issued a letter to Premcor, reporting that DNREC had performed an inspection of the FES on September 6, 2007, using an infrared camera, and identified hydrocarbon leaks from the FES. The DNREC letter requested that Premcor provide information concerning the FES, including an estimated quantification of the fugitive emissions. In response to DNREC's request, Premcor retained a consultant to develop a direct measurement methodology which provided estimated rates of fugitive emissions from the FES at a discrete point in time. Direct measurement events conducted in November 2007, March 2008, and June 2008 indicated leak rates of 60-81 lb/hr, 39-54 lb/hr, and 24-32 lb/hr, respectively. During this time frame, Premcor also implemented enhanced safety monitoring, and reviewed and enhanced the methodology of the repair program

11. Premcor's Toxic Release Inventory ("TRI Reports") and annual state air emissions inventory reports prior to reporting year 2007 do not appear to include any fugitive emissions from the FES.

12. Through this Order, DNREC finds that it is necessary to permanently eliminate unauthorized emissions including propane and propylene, from the FES. Premcor has informed DNREC that in order to cease emissions from the FES, Premcor intends to decommission the FES and acquire alternative storage capacity.

13. Available information indicates that an engineered decommissioning plan is necessary in order to close the FES unit in a safe and environmentally sound manner; that closure of the FES unit cannot be easily or immediately accomplished; and that it is not technically feasible for all fugitive emissions to cease immediately even if Premcor were to cease adding propane and propylene to the tank immediately.

14. Premcor indicates to DNREC that safety monitoring data collected in accordance with Premcor's safety plan for the FES shows low ambient concentrations of hydrocarbon vapors in the vicinity of the FES, indicating that the FES does not pose an imminent and substantial endangerment at this time

15. DNREC therefore issues this Order to provide for the safe and environmentally sound closure of the FES; to provide interim operating measures to minimize fugitive VOC emissions from the FES pending closure; and to otherwise clarify and provide for compliance with applicable requirements.

16. DNREC has determined that the performance of the actions identified in this Order including closure of the FES will achieve improvements in Delaware air quality control; that settlement of the alleged violations of Delaware air quality regulations addressed by this Order is in the best interest of the Parties and in the public interest; and that entry of this Order

without further litigation or further enforcement action of any type is the most appropriate means of resolving all alleged violations.

NOW, THEREFORE, it is the desire and demand of DNREC that Premcor take actions to minimize and ultimately to cease emissions of propane, propylene and other VOC from the FES in a manner that does not endanger the health, safety and welfare of the people and natural resources of the State of Delaware. Therefore, in consideration of the foregoing findings, and in lieu of any other remedies available to DNREC, notice is hereby given that it is proposed, pursuant to 7 *Del. C.* § 6005, that Premcor can best achieve compliance by immediately undertaking the following actions.

AND PREMCOR IS HEREBY ORDERED as set out in all of the following Sections below:

SECTION II. ALTERNATIVE STORAGE CAPACITY

17. Premcor shall provide alternative storage capacity sufficient to allow for cessation of emissions from the FES as soon as practicable but no later than May 1, 2010.

18. Acquiring alternative storage capacity to the FES will likely require the construction of aboveground storage vessels and any required ancillary facilities such as piping and loading equipment (collectively the “Alternative Storage Facilities”). All new Alternative Storage Facilities shall comply with best engineering practices based on consideration of API 2510 (“Design and Construction of LPG Installations”) and National Fire Prevention Association (NFPA 58—“Liquid Petroleum Gas Code”) standards and any other best engineering practices that might be identified by review of other refinery practices, other standards or by the State of

Delaware Fire Marshall's office unless there is an identified safety reason preventing the implementation of the practices.

19. Based on Premcor's representations regarding what type of Alternative Storage Facilities it intends to construct, DNREC believes that construction of the Alternative Storage Facilities will require regulatory authorization but will not require issuance of a Delaware State Regulation 1102 permit nor a Coastal Zone Act permit pursuant to 7 *Del. C.* Chapter 70.

20. Premcor shall review and modify its Risk Management Plan as necessary and, at a minimum, shall make any necessary modifications to reflect the construction of the Alternative Storage Facilities as soon as practicable following completion of construction of the Alternative Storage Facilities. In conjunction with the Risk Management Program, Premcor will review all plans for Alternative Storage Facilities with the Department.

SECTION III. DECOMMISSIONING PLAN

21. Premcor shall develop and implement a plan to de-inventory, decommission, and close the FES (hereafter "Decommissioning Plan") with the clear and urgent goal of ceasing emissions expeditiously, yet in a safe and environmentally-sound manner. Premcor shall acquire all air or other permits necessary to implement the Decommissioning Plan.

22. As soon as practical but no later than September 1, 2009, Premcor shall submit the Decommissioning Plan to DNREC for DNREC's review and approval. Until completion of all of the requirements of the Decommissioning Plan, Premcor shall submit quarterly reports on its progress, and those reports shall also contain independent estimates or measurements of emissions from the FES during that quarter. The Decommissioning Plan shall include:

a. A plan for de-inventorying and stabilizing the FES which shall address intended actions and methods to minimize and report any emissions anticipated to occur during Decommissioning, and shall identify any potential safety risks associated with decommissioning, including but not limited to any potential fire or explosion hazards; and measures to mitigate any risk associated with the decommissioning.

b. A detailed schedule with milestone deadlines for Decommissioning. Premcor shall meet all of the milestone deadlines established in the Plan, unless modifications to the Plan have been submitted and approved in advance by DNREC. In particular, this schedule shall provide for the addition of any inventory to the FES to cease, and Premcor shall cease adding inventory to the FES by no later than May 1, 2010.

c. Identification of potential impacts on groundwater and actions to be taken to prevent groundwater contamination, aquifer cross-contamination and other impacts. Premcor's decommissioning efforts shall not cause any groundwater contamination or aquifer cross-contamination.

d. Identification of the methods Premcor will use to control and monitor, with the ultimate goal of ceasing, any ongoing emissions of propane or propylene from the soils and groundwater surrounding the FES after it has been emptied of inventory until completion of the Decommissioning process. To the extent practicable, these methods shall be designed and implemented in the most environmentally protective manner that is safe and feasible.

23. DNREC will review and provide any comments on the Decommissioning Plan as expeditiously as possible, so that the Plan may be implemented as soon as the Replacement Storage Facilities are able to commence operations. Premcor and DNREC will work cooperatively in an attempt to promptly resolve any disagreements.

24. The Decommissioning Plan shall provide for the emptying of all propane and propylene from the FES by no later than December 15, 2010. Implementation of the Decommissioning Plan shall commence as soon as practical after execution of this Order and be sufficient to cease direct emissions from the FES no later than December 31, 2010.

SECTION IV. INTERIM MEASURES

25. Pending the de-inventorying of the FES, Premcor shall operate the FES in accordance with the following requirements in order to minimize, to the extent practicable, all emissions of propane or propylene from the FES:

a. Premcor shall maintain the current maintenance program of applying a bentonite slurry mixture to any identified surface expression of leaks; and

b. The effectiveness of the surface repairs shall be monitored on at least a weekly basis by using a handheld infrared (“IR”) camera. If it appears from IR camera observations that modifications to the interim repair technique or frequency are necessary to reduce VOC emissions, Premcor shall make such modifications as soon as reasonably practicable; and

c. During the period of time from the Effective Date until the monitoring plan set out in the Decommissioning Plan is implemented, Premcor shall directly measure

VOC emissions from the FES unit on a quarterly basis using the direct measurement methodology developed by Premcor.

26. DNREC expects and intends Premcor to cease direct emissions from the FES by the date set out in this Order. DNREC also expects and intends that Premcor will implement whatever Interim Measures are necessary to limit fugitive air emissions from the FES to the extent possible, but in no event shall future levels exceed levels similar in quantity and nature to those previously emitted. Thus, at a minimum, Premcor shall operate the FES in accordance with these Interim Measures, including limiting the amount of propane in the FES to no more than 380,000 barrels at any one time, until the FES is emptied and, as applicable, until completion of implementation of the Decommissioning Plan. Premcor shall describe its performance of these interim measures in the required progress reports.

SECTION V. REPORTING

27. Premcor's annual state air emissions inventory and its Toxics Release Inventory Reports for reporting year 2007 have been updated to reflect fugitive emissions from the FES unit, as quantified by Premcor through the direct emission measurement technique developed by its consultants, and based on the direct emissions measurement events described in Paragraph 10. Throughout the effective period of this Order, Premcor shall continue to report any fugitive emissions from the FES in its annual state air emissions inventory and Toxics Release Inventory reports in accordance with these practices, unless DNREC requires an alternative methodology or agrees to an alternative methodology proposed by Premcor. In particular, the quantity of fugitive emissions included within the reports shall be based on an arithmetic average of the

average emissions rate reported during each direct measurement event conducted during the period of time addressed by the emissions inventory report. If an alternative method of fugitive emissions monitoring is proposed as part of the Decommissioning Plan, the Decommissioning Plan shall set forth a proposed basis for reporting emissions in its emissions inventory reflective of the alternative methodology

28. Following the first full calendar quarter after the Effective Date of this Order, and semiannually thereafter, Premcor shall submit to DNREC, within 30 days after the end of such the reporting period, a progress report detailing progress with the requirements of this Order.

SECTION VI. PENALTY

29. In resolution of DNREC's claims of non-compliance as more specifically addressed by this Order, and in consideration of all mitigating facts and circumstances, including the fact that Premcor, with no admission of fact or law, has agreed to waive its statutory right to a hearing in this matter, Premcor shall pay to DNREC an administrative penalty of \$1.2 million. Premcor shall pay \$250,000 of the penalty within 30 days of the date of this Order. DNREC will accept as payment of the remainder of the penalty Premcor's completion of a Supplemental Environmental Project ("SEP"), which will consist of DNREC accepting \$950,000 (the remaining penalty at a ratio of 1:1 money for SEP) to be used to promote energy efficiency projects. The SEP money will be administered by DNREC in its discretion to provide to Delaware residents, government agencies, schools, non-profits, schools or other entities energy efficiency measures not otherwise provided by the Delaware Sustainable Energy Utility or other federal or state energy efficiency programs.

30. Premcor shall also complete an additional Supplemental Environmental Project as follows: Premcor shall conduct an evaluation of its pump deadheading, potential pipe deadlegs, and railcar loading of existing propane and butane facilities based on best industry practices including, but not limited to, API 2510 (“Design and Construction of LPG Installations”) or National Fire Prevention Association (“NFPA 58—“Liquid Petroleum Gas Code”), or other generally accepted engineering standards. Premcor shall provide DNREC with a report documenting its evaluation, together with recommended corrective actions and a proposed schedule, no later than December 31, 2008.

31. Premcor shall make payment to DNREC as required in paragraph 29 no later than 30 days following the Effective Date of this Order by submitting a corporate check, payable to the State of Delaware, to:

Valerie M. Satterfield
Deputy Attorney General
Delaware Office of the Attorney General
Environmental Unit – Third Floor
102 W. Water Street
Dover, DE 19904

SECTION VII. STIPULATED PENALTIES

32. Subject to the provisions of Sections II-V, Premcor shall pay stipulated penalties to DNREC for violations of the terms of this Order according to the provisions of this Section VII. Such penalties shall be paid by submitting a corporate check payable to the State of Delaware and sent to the address set forth above in Section VI (Penalty). For each referenced violation, the amounts identified below shall apply on the first day of violation, and shall be

calculated for each incremental period of violation (or portion thereof).

a. Failure to meet the requirements related to the Decommissioning Plan as set forth in Section III of this Order:

i) Failure to timely cease direct emissions from the FES pursuant to paragraph 25: \$20,000 per month for the first 2 months followed by \$50,000 per month for all additional months.

ii) Failure to timely meet the milestone deadlines as provided in the Decommissioning Plan pursuant to paragraph 23(b) : \$20,000 per month for the first two months followed by \$50,000 per month for all additional months.

b. Failure to implement all of the required Interim Measures each calendar quarter: \$10,000 per month.

c. Failure to timely submit semiannual progress reports as provided in Paragraph 28: \$1,000 per week.

33. Subject to the provisions of Section XII (Effect of Settlement), the State of Delaware and DNREC reserve the right to pursue any other remedies to which it is entitled, including, but not limited to, additional injunctive relief, for any violations by Premcor of this Order or applicable regulatory standards.

34. DNREC will not seek both stipulated and civil penalties for any violation arising under this Order.

SECTION VIII. GENERAL PROVISIONS

APPLICATION AND SCOPE

35. The provisions of this Order shall apply to and be binding upon DNREC and Premcor, including Premcor's parent, subsidiary and affiliated corporations, its and their officers, employees, agents, successors and assigns, and shall apply to the Refinery for the term of this Order. In the event Premcor proposes to sell or transfer the Refinery, it shall advise in writing such proposed purchaser or successor-in-interest of the existence of this Order and provide a copy of the Order, and shall send a copy of such written notification by certified mail, return receipt requested, to DNREC before such sale or transfer, if possible, but no later than the closing date of such sale or transfer. This provision does not relieve Premcor from having to comply with any other applicable state or local regulatory requirement regarding notice and transfer of facility permits.

SECTION IX. RIGHT OF ENTRY

36. Any authorized representative of DNREC, including independent contractors, upon presentation of credentials, shall have a right of entry upon the premises of the Refinery at any reasonable times for the purposes of monitoring compliance with the provisions of this Order, including inspecting equipment associated with the FES at the Refinery, and inspecting and copying all records maintained by Premcor required by this Order. Nothing in this Order shall limit the authority of DNREC to conduct tests and inspections under applicable statutory and regulatory provisions.

SECTION X. FORCE MAJEURE

37. If any event occurs that causes or may cause a delay or impediment to performance in complying with any provision of this Order, Premcor shall notify DNREC in writing as soon as practicable, but in any event within 20 business days of when Premcor first knew of the event or should have known of the event by the exercise of due diligence. In this notice, Premcor shall specifically reference this paragraph of this Order and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by Premcor to prevent or minimize the delay and the schedule by which those measures will be implemented. Premcor shall adopt all reasonable measures to avoid or minimize such delays.

38. Failure by Premcor to comply with the notice requirements of paragraph 37, shall render this Section X voidable by DNREC as to the specific event for which Premcor has failed to comply with such notice requirement, and, if voided, it shall be of no effect as to the particular event involved.

39. DNREC shall notify Premcor in writing regarding Premcor's claims of a delay or impediment to performance within 20 business days of DNREC's receipt of the Force Majeure notice required under paragraph 37.

40. If DNREC agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Premcor, including any entity controlled by Premcor, and that Premcor could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s)

affected by the delay by a period equivalent to the delay actually caused by such circumstances, or such other period as may be appropriate in light of the circumstances. Such stipulation may be entered as a modification to this Order by agreement of the parties. Premcor shall not be liable for stipulated penalties for the period of any such delay. If the Parties cannot agree to an extension of the required deadline(s) for all requirement(s) affected by the delay, then Premcor may invoke Dispute Resolution under Section XI of this Order with respect to the affected deadline(s).

41. If DNREC does not accept Premcor's claim of a delay or impediment to performance, DNREC's position shall be binding unless Premcor invokes Dispute Resolution under Section XI of this Order.

42. Premcor shall bear the burden of proving that any delay of any requirement(s) of this Order was caused by or will be caused by circumstances beyond its control, including any entity controlled by Premcor, and that Premcor could not have prevented the delay by the exercise of due diligence. Premcor shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates.

43. Unanticipated or increased costs or expenses associated with the performance of Premcor's obligations under this Order shall not constitute circumstances beyond Premcor's control, or serve as a basis for an extension of time under this Section.

44. Notwithstanding any other provision of this Order, no inference shall be drawn nor presumptions adverse to any party established as a result of Premcor transmitting a notice of Force Majeure or the Parties' inability to reach an agreement.

SECTION XI. DISPUTE RESOLUTION

45. The dispute resolution procedure provided by this Section XI shall be available to resolve all disputes arising between DNREC and Premcor under this Order, provided that DNREC and Premcor shall make a good faith attempt to resolve the matter independent of dispute resolution.

46. The dispute resolution procedure required herein shall be invoked upon the giving of written notice by either Premcor or DNREC to the other, advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute, and shall state the noticing party's position with regard to such dispute. The party receiving such a notice shall acknowledge receipt of the notice and the parties shall expeditiously schedule a meeting to discuss the dispute informally, not later than 14 days from the receipt of such notice.

47. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiation shall not extend beyond 30 calendar days from the date of the first meeting between representatives of DNREC and Premcor, unless the parties' representatives agree to extend this period.

48. In the event that the parties are unable to reach agreement during such informal negotiation period, the Secretary shall issue a written decision summarizing the Secretary's position regarding the dispute. The Parties agree that any written decision issued by the Secretary

in accordance with this paragraph constitutes an action that substantially affects Premcor's interest, as identified in *7 Del. C. § 6008*, and therefore intend that such decision may be appealed to the EAB pursuant to *7 Del. C. § 6008*. The Secretary's decision regarding the dispute shall be considered binding unless Premcor appeals the decision to the EAB in accordance with *7 Del. C. § 6008*.

49. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Section may be shortened upon the agreement of the Parties.

50. As part of the resolution of any dispute submitted to dispute resolution or any appeal of a permit issued by DNREC in accordance with this Order, the Parties, by agreement, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Order to account for the delay in the work that occurred as a result of dispute resolution or any appeal of a permit issued by DNREC in accordance with this Order. Premcor shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

51. As part of the resolution of any dispute submitted to dispute resolution, the EAB may, in appropriate circumstances, remand the matter to DNREC with direction to extend or modify the schedule for completion of work under this Order to account for the delay in the work that occurred as a result of dispute resolution. Premcor shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

SECTION XII. EFFECT OF ORDER

52. Entry of this Order constitutes full settlement of and shall resolve all civil and administrative liability of Premcor to DNREC for any violations of or noncompliance with any state law, including without limitation under any state-enforceable or delegated federal law, common law or any statute, regulation, permit provision, standard, order or notice, including without limitation under the Notice of Violation, related to alleged violations of standards, requirements or regulations arising from or associated with Premcor's operation of the FES unit from the time it purchased the Delaware City Refinery until the date of issuance of this Order (collectively "Alleged FES Noncompliance"). Notwithstanding the foregoing, in the event that Premcor does not complete the actions required by this Order in substantial compliance with the applicable requirements specified by this Order, then Premcor shall not be entitled to assert the release of liability contained in this paragraph as a defense to any action commenced by DNREC related to Alleged FES Noncompliance.

53. During the term of this Order, to the extent that Premcor takes action to further the Order, then Premcor's management and operation of the FES unit shall be pursuant to the requirements of this Order, and to the extent Premcor complies with the requirements identified in this Order, the releases of liability set forth in paragraph 52 shall extend through the time of Premcor's satisfactory completion of the requirements of this Order. Notwithstanding the foregoing, in the event that DNREC terminates this Order due to Premcor's material failure to complete the actions required by this Order in substantial compliance with the applicable requirements specified by this Order, then the release of liability otherwise provided by this

paragraph shall not provide Premcor a defense to any action commenced related to Alleged FES Noncompliance by Premcor subsequent to the Effective Date. Further, to the extent that Premcor during the implementation of the Decommissioning Plan causes or allows any emission of pollutants from the FES that in DNREC's discretion materially exceed the scope or duration of those indicated to have occurred in the past during Premcor's ownership of the refinery, then the release of liability provided by this paragraph shall not provide Premcor any defense to any enforcement action related to alleged Noncompliance by Premcor related to such material exceedence. This paragraph is intended to limit the provisions of paragraph 54 below.

54. Except for any outstanding Stipulated Penalties due in accordance with Section VII of this Order, and except as set out in paragraphs 52 and 53 above, compliance with the provisions of Sections II through V of this Order constitutes full settlement of and shall resolve all civil and administrative liability of Premcor to DNREC for any Alleged FES Noncompliance from the Effective Date through termination of this Order.

SECTION XIII. GENERAL PROVISIONS

55. This Order is entered in resolution of a disputed matter in the interest of achieving prompt resolution without further litigation. By its agreement to the terms and conditions of this Order, Premcor makes no admission of fact or law. This Order is subject to exclusion under Federal Rule 408 and equivalent provisions under Delaware law.

56. Governing Law. This Order shall be governed by, and interpreted under, the laws of the State of Delaware. For purposes of enforcement or implementation of any provision of this Order, the parties submit to the jurisdiction of the Environmental Appeals Board and any Federal

Court or Court of the State of Delaware with subject matter jurisdiction over the matters governed by this Order.

57. Other Laws. Except as specifically provided by this Order, nothing in this Order shall relieve Premcor of its obligation to comply with all applicable federal, state and local laws and regulations. Subject to paragraph 37 (Force Majeure) and Section XII (Effect of Order), nothing contained in this Order shall be construed to prevent, alter or limit the ability of DNREC to seek or obtain other remedies or sanctions available under other federal, state or local statutes or regulations, in response to any violation by Premcor of applicable statutes and regulations.

58. Third Parties. This Order does not limit or affect the rights of Premcor or of DNREC against any person or entity, not party to this Order, nor does it limit the rights of any person or entity, not party to this Order against Premcor, except as otherwise provided by law. This Order shall not be considered to create rights in, or grant any cause of action to, any third party not party to this Order.

59. Public Documents. All information and documents submitted by Premcor to DNREC pursuant to this Order shall be subject to public inspection, unless subject to legal privileges or protection or identified and supported by Premcor as business confidential in accordance with applicable state law and regulations.

60. Notice. Unless otherwise provided herein, notifications to or communications with DNREC or Premcor shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt

requested, or on the date that they are hand delivered. Except as otherwise provided herein, when written notification or communication is required by this Order, it shall be addressed as follows:

As to Premcor:

Patrick Covert
Health, Safety and Environmental Director
The Premcor Refining Group Inc.
4550 Wrangle Hill Road
Delaware City, DE 19706

Elizabeth Bourbon, Esquire
Environmental Safety & Regulatory Affairs Law
Valero Energy Corporation
One Valero Way
San Antonio, TX 78249-1112

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

As to DNREC:

Ravi Rangan, Environmental Engineer
Delaware Department of Natural Resources
and Environmental Control
Division of Air & Waste Management
Engineering & Compliance Branch
715 Grantham Lane
New Castle, DE 19720

Valerie M. Satterfield
Deputy Attorney General
Delaware Office of the Attorney General
Environmental Unit - Third Floor 102 W. Water Street
Dover, DE 19904

Either party may change the notice recipient and/or the address for providing notices to it by serving the other party with a notice setting forth such new notice recipient or address.

61. Authorized Representatives. The undersigned representative of each Party to this Order is authorized by the Party whom he or she represents to enter into the terms and bind that Party to them.

62. Modification. This Order may be modified only by the written consent of DNREC and Premcor.

SECTION XIV. TERMINATION

63. This Order shall terminate upon the earlier of two events: 1) the expiration of 7 years from the date of this Order, or 2) upon Premcor's demonstration that it has satisfied the requirements set forth herein. Specifically, Premcor must demonstrate it has paid any stipulated penalties that may be due to the State of Delaware under this Order; implemented the Interim Measures; met the requirements regarding the Alternative Storage Facilities; and implemented the Decommissioning Plan. At such time, if Premcor believes that it is in compliance with the requirements of this Order, and has paid any stipulated penalties required by this Order, then Premcor shall so certify to DNREC. Within 60 days after receipt of Premcor's certification, DNREC shall provide a written response to Premcor indicating whether DNREC concurs that Premcor is in compliance with the requirements of this Order and has paid all stipulated penalties required by this Order. To the extent that DNREC states in such response that it does not concur with Premcor's certification, then DNREC shall identify within its response those requirements of the Order with which DNREC asserts that Premcor is not in compliance, and/or any stipulated

penalties that DNREC asserts are due and owing from Premcor under this Order. Any disagreement between the Parties with respect to termination under this paragraph is subject to the dispute resolution provisions of Section XI of this Order. Termination of this Order under this paragraph 63 upon Premcor's demonstration of satisfaction shall conclusively and finally establish that Premcor has satisfied all the requirements of this Order for purposes of Section XII (Effect of Settlement). If this Order terminates due to the expiration of the term of 7 years, then any release of liability herein shall not extend to cover any potential violations beyond the date of termination. At such a time, DNREC and Premcor agree to work cooperatively, to the extent possible, to reach an agreement governing future responsibilities.

FOR THE STATE OF DELAWARE

John A. Hughes, Secretary
Department of Natural Resources
and Environmental Control
89 Kings Highway
Dover, DE 19901

Date: _____

ACCEPTED AND AGREED TO BY:

FOR THE PREMCOR REFINING GROUP INC.

John Pickering
Vice President & General Manager
The Premcor Refining Group Inc.
4550 Wrangle Hill Road
Delaware City, DE 19706

Date: _____