

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), an agency of the State of California with its principal location at 1001 I Street, Sacramento, California 95814, the Bay Area Air Quality Management District (BAAQMD or Air District), a California regional government agency with its principal location at 375 Beale Street, Suite 600, San Francisco, California 94105, and Valero Refining Company - California (Valero), a Delaware corporation with its principal location at One Valero Way, San Antonio, Texas 78249-1616 (collectively, the "Parties," and individually, "Party").

LEGAL BACKGROUND

- (1) BAAQMD is the governmental agency with primary regulatory authority over stationary sources of air pollution in the San Francisco Bay Area, for enforcing laws relating to air pollution, and for maintaining healthy air quality. (Health & Saf. Code, § 39002.) BAAQMD adopts and enforces regulations to control air pollution and protect public health, and also enforces applicable provisions of state and federal law incorporated into its own regulatory programs.
- (2) CARB enforces certain provisions of the Health and Safety Code, including, without limitation, provisions relating to the protection of air quality. CARB is responsible for coordination of activities and providing assistance to the state's air districts, and it may do such acts as necessary for the proper execution of the powers and duties granted to it (e.g., Health & Saf. Code, §§ 39600, 39602, 39605).
- (3) The Health and Safety Code authorizes BAAQMD and CARB to seek civil penalties and injunctive relief in the name of the People of the State of California for violations of state laws, regulations, and permit conditions. (See Health & Saf. Code, §§ 41513, 42402-42402.3, 42403, 42411 & 44381.)
- (4) Air District Regulations 8-2-301 and 13-5-301 prohibit any emission¹ of more than 15 pounds per day (lb/day) of organic compounds,² and containing a

¹ Under Air District Regulation 1-213, "emission" or "emissions" are defined to mean a gas or liquid stream containing one or more air contaminants, and "emit" means the act of discharging an emission into the atmosphere. Under Air District Regulation 1-201, "air contaminant" or "air pollutant" means any material which, when emitted, causes or tends to cause the degradation of air quality, including but not limited to carbon and gases. Hydrogen and steam are not regulated emissions unless they contain one or more air contaminants.

² Under Air District Regulation 8-2 and 13-5, emissions of organic compounds are calculated as total carbon emissions using the mass weight of only the carbon atoms in the molecule. Under Air District Regulation 8-2, methane is not included in the calculation of total carbon emissions. Under Air District Regulation 13-5, methane is included in the calculation of total carbon emissions.

concentration of more than 300 parts per million (ppm) of organic compounds.³

- (5) Air District Regulation 8-28-407 required regulated facilities to submit to BAAQMD, by March 1, 2006, a Process Unit Identification Report listing all process units in organic compound service equipped with atmospheric pressure release devices (PRDs), and identifying all associated PRDs subject to the Regulation.
- (6) Air District Regulation 8-28-406 required regulated facilities to submit to BAAQMD, by June 1, 2007, a Monitoring System Demonstration Report showing that each PRD subject to the Regulation had a compliant monitoring system.
- (7) Air District Regulation 8-28-401 requires regulated facilities to report any release from a PRD of regulated pollutants greater than 10 lb/day to BAAQMD by the next working day after the release event.
- (8) Air District Regulation 8-28-304.2 requires regulated facilities to route any PRD in organic compound service that experienced two or more release events during any consecutive five calendar-year period to a vapor recovery or disposal system within one year of the second release event. Under Air District Regulation 8-28-214, "release event" means any release of organic or inorganic pollutants greater than 10 pounds from a PRD subject to Air District Regulation 8-28 into the atmosphere.
- (9) Air District Regulation 8-18-401 requires regulated facilities to inspect all equipment components handling organic compounds for leaks either quarterly or annually depending on the component.
- (10) Air District Regulation 8-18-402 requires regulated facilities to identify all equipment components handling organic compounds with an identification code approved by the Air District in order to facilitate inspections and compliance verification by BAAQMD.
- (11) Air District Regulation 2-6 requires regulated facilities that have the potential to emit over 10, 25, or 100 tons of emissions per year (depending on the pollutant at issue) to obtain a "Major Facility Review Permit" from BAAQMD. The purpose of Major Facility Review Permits is to incorporate all of the regulatory requirements applicable to these large and complex facilities into one comprehensive document to promote transparency and enforceability. Among these regulatory requirements are standard permit conditions (Standard Conditions) that are

³ The 15 lb/day and 300 ppm emissions limit was initially set by Air District Regulation 8-2-301, which applies to "miscellaneous operations" that are not subject to any other relevant Air District regulation. On May 4, 2022, the Air District adopted Regulation 13-5 imposing this same limit specifically for atmospheric vents located within industrial hydrogen plants, with methane included as a component of organic compound in the calculation, as of the effective dates set forth in Air District Regulation 13-5-401.

included in Major Facility Review Permits. Standard Conditions include:

- Annual submission of a compliance certification stating whether the facility is in compliance with each “applicable requirement” it is subject to. Applicable requirements include all applicable air quality requirements established by Air District Regulations, state law, and federal law. (See Air Dist. Reg. 2-6-202.)
- Reporting all instances of regulatory non-compliance to BAAQMD within 10 days of discovery (termed “10-Day Deviation Reports”), and submission of written reports indicating the probable cause of the non-compliance and any corrective or preventative actions within 30 days of discovery (termed “30-Day Deviation Reports”).

- (12) Air District Regulation 1-441 requires regulated facilities to provide information documenting the quantity and nature of any air contaminants the facility is, or may be, emitting within 30 days of a request by BAAQMD. Regulated facilities are also required to periodically provide an inventory of their emissions to comply with the Air Toxics “Hot Spots” Information and Assessment Act. (Health & Saf. Code, § 44300 et seq.; Cal. Code Regs., tit. 17, § 90700 et seq.)
- (13) Air District Regulations 2-1-302 and 2-1-320 require regulated facilities that operate equipment that may emit air contaminants to obtain a Permit to Operate from BAAQMD before operating that equipment and to operate the equipment in conformance with any representations made or information submitted in permit applications.
- (14) Health and Safety Code section 41700, subdivision (a) prohibits “discharge from any source whatsoever quantities of air contaminants⁴ or other material that cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public, or that cause, or have a natural tendency to cause, injury or damage to business or property.”
- (15) Any person who violates Air District Regulations and/or provisions of the Health and Safety Code is liable for civil penalties. (Health & Saf. Code, §§ 42402-42402.3.) Any and all violations are subject to strict liability penalties, regardless of intent or associated emissions. (Health & Saf. Code, § 42402.) The amount of penalties for illegal emissions of air contaminants is set forth in Health and Safety Code sections 42402 through 42402.3 and escalates based on the intent of the violator. (Health & Saf. Code, §§ 42402-42402.3.) The maximum penalty per violation is annually adjusted to account for inflation. (Health & Saf. Code, § 42411.) Each day during any portion of which a violation occurs is a separate violation for which penalties may be imposed. (Health & Saf. Code, §§ 42402-

⁴ Under Health and Safety Code section 39013, “air contaminant” means any discharge, release, or other propagation into the atmosphere, including but not limited to carbon and gases.

42402.3.)

- (16) Health and Safety Code section 44381 provides for a civil penalty for failing to provide information required by the Air Toxics "Hot Spots" Information and Assessment Act (Health & Saf. Code, §§ 44300 et seq.), with an additional penalty assessed for each day that the required information is not submitted or that the violation is continued.
- (17) The Health and Safety Code also authorizes injunction of any violation of the Code or an Air District Regulation. (Health & Saf. Code, § 41513.)

CARB AND BAAQMD CASE BACKGROUND AND ALLEGATIONS

- (18) At all relevant times, Valero was a corporation organized under the laws of Delaware that conducted business in the State of California, including through its operation of a petroleum refinery located at 3400 East 2nd Street, Benicia, California 94510-1097 known as the Valero Benicia Refinery (Refinery).
- (19) The Refinery processes crude oil to produce refined petroleum products such as gasoline and diesel fuel that are sold primarily to the California market. It has the capacity to process up to approximately 165,000 barrels of crude oil per day. The Refinery's various process units operate over a wide range of temperatures and pressures and handle highly volatile product streams, some of which contain air contaminants. Valero purchased the Refinery from Exxon Mobil Corporation on March 2, 2000.
- (20) CARB and BAAQMD allege that since at least 2003, Valero failed to comply with applicable statutory and regulatory requirements (set forth above) in connection with undisclosed emissions of air contaminants from equipment that generates and distributes hydrogen gas at the Refinery. The Refinery generates and uses hydrogen gas that is contaminated with precursor organic compounds (POCs), which are air contaminants that contribute to the Bay Area's regional smog and particulate pollution problems, and benzene, toluene, ethylbenzene, and xylene (BTEX) compounds, which are hazardous and toxic air contaminants, some of which are known to cause cancer, reproductive harm, or other health effects dependent on the contaminant, the concentration, and the duration of exposure.

The Refinery's Hydrogen System

- (21) Hydrogen is an essential component of various refining processes. The Refinery generates hydrogen gas from two sources: the Hydrogen Units and the Naphtha Reformer Unit. The Hydrogen Units produce relatively pure hydrogen that does not contain significant amounts of POCs. However, the Naphtha Reformer Unit produces hydrogen that contains varying amounts of regulated organic carbon compounds, including POCs and BTEX. The hydrogen streams generated by

the Hydrogen Units and the Naphtha Reformer Unit are combined after the hydrogen from the Naphtha Reformer Unit is piped to the Refinery's Hydrogen Compressor Unit, where the combined stream is compressed and then distributed through pipes to hydrogen-consuming process units throughout the Refinery or is vented to the atmosphere.

- (22) The Hydrogen Units, the Naphtha Reformer Unit, the Hydrogen Compressor Unit, the piping that circulates the hydrogen around the Refinery, and all of the related vents, components (e.g., PRDs), and other equipment used to supply the Refinery's process units with hydrogen are collectively referred to as the "Hydrogen System." The Hydrogen System was part of the original construction of the Refinery and has been in use since the Refinery was commissioned in 1968.
- (23) The Hydrogen System generates a surplus of hydrogen to ensure sufficient supply for all hydrogen-consuming processes while simultaneously maintaining the necessary operating pressure for those processes. In order to maintain this balance of supply and operating pressure, the Hydrogen System regularly (until October 2019) vented surplus hydrogen to the atmosphere, primarily from control valve H2P017 via atmospheric vent ST-302⁵ located downstream of where the combined hydrogen streams from the Hydrogen Units and the Naphtha Reformer Unit are compressed in the Hydrogen Compressor Unit and distributed throughout the Refinery.⁶ After the hydrogen circulates within the Refinery, unused hydrogen is routed back to the Hydrogen Units to be re-used. There are also vents located within the Hydrogen Units from which the contaminated hydrogen gas stream is occasionally released to atmosphere, referred to as the "Hydrogen Unit Vents."
- (24) The Hydrogen System is also equipped with multiple PRDs - safety devices that prevent extreme overpressures that could cause catastrophic equipment failure. Under normal conditions, PRDs remain closed, but in the event of an upset or malfunction that causes pressure to rise to potentially dangerous levels, the PRDs open to vent excess gas buildup that could rupture or otherwise damage the equipment. As noted above, portions of the Refinery's hydrogen gas stream contain POCs and BTEX, so gas released from certain Hydrogen System PRDs contains these air contaminants, depending on where they are located in the

⁵ Valero has variously identified the emissions from ST-302 with the following alphanumeric codes: ST-302, H2P017, and P-1010 but these terms are not interchangeable as they refer to different components of the process and individual pieces of equipment. ST-302 is an atmospheric vent located within the hydrogen plant. H2P017 (also called P017) is the control valve upstream of ST-302 used to relieve excess pressure from the hydrogen grid for safety reasons. When the valve opens, hydrogen is routed from the grid to the atmosphere via ST-302. BAAQMD has assigned ST-302 the emission point number P-1010.

⁶ In October of 2019, Valero installed a "jump-over line bypass" to minimize emissions from H2P017 to ST-302 by bypassing it (confining hydrogen and other process gas within the Hydrogen System) during normal Refinery operations.

process and the operating status of the Refinery.

- (25) The Hydrogen System also includes various components such as valves, compressors, pumps, fittings, pipes, and connectors. These components are designed to be gas-tight. However, it is possible for these components to develop leaks for various reasons. Air District regulations therefore require facilities like the Refinery to check, at regular intervals, all components that handle process streams that contain organic compounds that could result in leaks above the regulatory thresholds.

Emissions of Air Contaminants from Hydrogen System Vents

- (26) CARB and BAAQMD allege that at various times Valero emitted organic compounds from ST-302 and 4 of the other Hydrogen Unit Vents⁷ exceeding the regulatory limit of 15 lb/day and 300 ppm under Air District Regulations 8-2-301 and 13-5-301. CARB and BAAQMD allege that since 2003, Valero has intermittently emitted POCs in violation of these limits.
- (27) On March 21, 2019, BAAQMD issued Notice of Violation (NOV) No. A58465 to Valero (amended on October 13, 2020) for POC emissions from ST-302 in violation of Air District Regulation 8-2-301. On January 26, 2023, BAAQMD issued NOV No. 60588 to Valero for POC emissions from the Hydrogen Unit Vents in violation of Air District Regulation 8-2-301.

Operation of Hydrogen System Pressure Relief Devices without Pollution Control Equipment

- (28) CARB and BAAQMD allege that Valero also failed to install required air pollution control equipment for certain PRDs on its Hydrogen System by the regulatory deadlines to do so. CARB and BAAQMD allege that there are 8 PRDs⁸ on the Hydrogen System that experienced multiple release events within periods of five consecutive years, but Valero failed to install the required vapor recovery or disposal system within one year of the second release event. CARB and BAAQMD allege that these 8 PRDs collectively experienced at least 55 release events since the dates by which they were required to be equipped with a vapor recovery or disposal system, in violation of Air District Regulation 8-28-304.2.
- (29) On September 16, 2022, BAAQMD issued NOV No. A60805 to Valero for operating these 8 PRDs without piping them to a vapor recovery or disposal system within one year of the second release event within five years, in violation of Air District Regulation 8-28-304.2.

⁷ Valero identifies these 4 Hydrogen Unit Vents as Vents 2A, 2B, 3A, and 3B.

⁸ Valero identifies these 8 Hydrogen System PRDs with the following alphanumeric codes: SV313-1, SV313-3, SV313-4, SV314-1, SV314-2, SV314-3, SV383, and SV384.

- (30) Valero reports that the 8 Hydrogen System PRDs were fully piped to a vapor disposal system (the flare header) meeting the requirements of applicable Air District Regulations as of September 25, 2023. On October 2, 2023, the Air District confirmed the PRDs were piped to the flare.

Failure to Identify Pressure Relief Devices in Required Reports

- (31) CARB and BAAQMD allege that Valero also failed to submit required reports to BAAQMD regarding PRDs on the Hydrogen System. As noted above, Air District Regulation 8-28-407 required Valero to identify all of its process units equipped with PRDs, and all of the PRDs subject to the Regulation on those process units, in a Process Unit Identification Report due no later than June 1, 2006. Air District Regulations 8-28-503 and 8-28-406 further required Valero to equip each PRD subject to the Regulation that has the potential to release to the atmosphere with a monitoring system capable of detecting a release event, and to submit a Monitoring System Demonstration Report demonstrating that each regulated PRD was so equipped. Valero submitted a Process Unit Identification Report for the Refinery in 2006, but CARB and BAAQMD allege that it failed to identify 27 regulated PRDs⁹ on the Hydrogen System as required by Air District Regulation 8-28-407. Valero subsequently submitted a Monitoring System Demonstration Report in 2007, but CARB and BAAQMD allege that it failed to include those 27 PRDs and failed to demonstrate that they were being adequately monitored as required by Air District Regulations 8-28-503 and 8-28-406.
- (32) On December 1, 2020, BAAQMD issued NOV No. A59609 (amended on February 28, 2022) for failing to identify the 27 PRDs that were not identified in the Process Unit Identification Report and the Monitoring System Demonstration Report in violation of Air District Regulations 8-28-406 and 8-28-407.

Failure to Disclose Releases From Pressure Relief Devices

- (33) CARB and BAAQMD allege that Valero also failed to report release events from PRDs on the Hydrogen System. CARB and BAAQMD allege that certain Hydrogen System PRDs experienced 102 release events between 2010 and 2021, but Valero did not report them to BAAQMD as required by Air District Regulation 8-28-401.
- (34) On September 16, 2022, BAAQMD issued NOV No. A60806 for failing to report these 102 release events as required by Air District Regulation 8-28-401.

⁹ Valero identifies these 27 Hydrogen System PRDs with the following alphanumeric codes: SV313-3, SV314-1, SV315-4, SV1625A, SV313-1, SV314-2, SV315-3, SV-1625B, SV313-4, SV314-3, SV315-2, SV-1625C, SV383, SV367, SV384, SV385, SV386, SV310A, SV310B, SV318, SV338, SV360A, SV360B, SV368, SV388, SV319, and SV369.

Failure to Inspect Hydrogen System Components for Leaks

- (35) CARB and BAAQMD allege that Valero also failed to identify and inspect 8,218 individual components within its Hydrogen System to ensure that they were not emitting to the atmosphere above the regulatory thresholds. CARB and BAAQMD allege that Valero was required to identify these components with a unique code and inspect them on a regular basis but failed to do so, in violation of Air District Regulations 8-18-401 and 8-18-402. CARB and BAAQMD allege that Valero failed to conduct required inspections of these components since 2004. CARB and BAAQMD allege that Valero's failure to conduct these inspections created a risk of air contaminant emissions because the components may have been emitting to the atmosphere above the regulatory thresholds.
- (36) On June 17, 2021, BAAQMD issued NOV No. A59627 to Valero for failure to identify and inspect 4,304 of the Hydrogen System components in violation of Air District Regulations 8-18-401 and 8-18-402. On October 11, 2021, BAAQMD issued a second NOV (No. A59512) for continuing violations. These NOVs did not include 3,914 additional components that were independently identified by Valero, amounting to 8,218 Hydrogen System components in violation of Air District Regulations 8-18-401 and 8-18-402.

Incomplete Certifications of Compliance

- (37) CARB and BAAQMD allege that from 2003 through 2022, Valero failed to include applicable requirements that the Refinery was not in compliance with in its annual compliance certification submission to BAAQMD, in violation of Standard Condition I.I. in Valero's Major Facility Review Permit. Under Air District Regulation 2-6-202, these requirements include all applicable air quality requirements established by Air District Regulations, state law, and federal law. CARB and BAAQMD allege that the applicable requirements with which the Refinery was not in compliance are Valero's violations of Air District Regulations and state law identified elsewhere in this Settlement Agreement.

Failure to Submit Required Reports Regarding Instances of Non-Compliance

- (38) CARB and BAAQMD allege that Valero failed to timely submit 10- or 30-Day Deviation Reports regarding certain violations of Air District Regulations and state law identified elsewhere in this Settlement Agreement, in violation of Standard Condition I.F. in Valero's Major Facility Review Permit.

Failure to Timely Provide Information Requested by BAAQMD

- (39) On August 11, 2021, the Air District sent Valero an information request pursuant to Air District Regulation 1-441 requesting release event data for the 27 Pressure Release Devices discussed above in connection with Valero's violations of Air District Regulation 8-28. When BAAQMD did not receive what it considered a

complete submission of the requested information within 30 days after Valero's receipt of the request, it sent Valero a deficiency letter on December 10, 2021, and requested the information again. When BAAQMD did not receive what it considered a complete submission of the requested information within 30 days after Valero's receipt of the deficiency letter, BAAQMD issued NOV No. A59513 to Valero on January 26, 2022, for violation of Air District Regulation 1-441. When BAAQMD still did not receive what it considered a complete submission of the requested information after Valero's receipt of NOV No. A59513, BAAQMD issued a second NOV No. A59526 to Valero on July 28, 2022. Valero submitted what the Air District considered a complete response containing all of the requested information to BAAQMD on September 14, 2022.

- (40) CARB and BAAQMD allege that Valero's violation of Air District Regulation 1-441 was ongoing from September 11, 2021 (30 days after the date of BAAQMD's initial request) until Valero submitted what the Air District considered a complete response containing all of the requested information to BAAQMD on September 14, 2022.

Operation of Equipment that Emits Air Contaminants and is Not Covered by an Air District Permit to Operate

- (41) CARB and BAAQMD allege that vents in the Hydrogen System emit air contaminants, as discussed above, but Valero never sought or obtained from BAAQMD Permit(s) to Operate the vents as stand-alone equipment or identified them to BAAQMD as part of other Hydrogen System equipment that did have Permits to Operate, i.e., the Naphtha Reformer and Hydrogen Plants. CARB and BAAQMD allege that Valero operated these vents without Permit(s) to Operate in violation of Air District Regulations 2-1-302 and 2-1-320 since Valero acquired the Refinery on March 2, 2000.

Public Nuisance from Emissions of Air Contaminants

- (42) CARB and BAAQMD allege that on days when weather conditions carried Hydrogen System vent emissions into communities surrounding the Refinery, those emissions may have constituted and caused a public nuisance in violation of Health and Safety Code section 41700 and Air District Regulation 1-301.

TERMS AND CONDITIONS

The Parties desire to settle and resolve all claims, disputes, and obligations relating to or arising from the alleged violations described above or that could have arisen from or been alleged based on the events, acts or omissions at issue in this settlement, including, but not limited to the alleged violations covered by the NOVs referenced in Exhibit 1 and voluntarily agree to resolve this matter by means of this Settlement Agreement. To fully settle and resolve the alleged violations referred to above in the Legal Background and CARB and BAAQMD Case Background and Allegations,

Notices of Violation and Title V deviations described herein and referenced in Exhibit 1, and in consideration of the facts set forth above, the mutual promises contained herein, the release of claims set forth below, the actions Valero has taken or agrees to take as specified below within the Terms and Conditions, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, CARB, BAAQMD, and Valero agree as follows:

- (43) Settlement Amount. Valero shall pay a total of **eighty-one million nine hundred sixty-two thousand six hundred and two dollars (\$81,962,602.00 USD)** to settle and resolve the allegations and claims covered by this Settlement Agreement (the "Total Settlement Payment"). Valero shall pay the Total Settlement Payment as follows:
- (a) A total of **eighty million eight hundred thousand dollars (\$80,800,000.00 USD)** shall be paid to BAAQMD and allocated in accordance with BAAQMD's "Policy: Funding Community Benefits from Penalty Funds" adopted on May 1, 2024.
 - (b) A total of **one million one hundred sixty-two thousand six hundred two dollars (\$1,162,602.00 USD)** shall be paid to CARB for deposit into the Air Pollution Control Fund for cost recovery.
 - (c) Valero shall make all payments required under this Paragraph 43 within 30 calendar days after the Effective Date.
- (44) Settlement Payment Methods. Valero shall pay the amount due to CARB by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Valero shall pay the civil penalty amount due to BAAQMD by wire transfer using instructions provided separately by BAAQMD, or by check payable to "Bay Area Air Quality Management District." Valero is responsible for any/all payment processing fees. Payment to CARB shall be accompanied by the Payment Transmittal Form to ensure proper processing. CARB shall deposit the payment amount into the Air Pollution Control Fund to compensate CARB for its costs of investigating the alleged violations of law that are the subject of this Settlement Agreement and overseeing implementation of the terms of this Settlement Agreement. Should payment instructions change, CARB or BAAQMD will provide notice to Valero in accordance with Paragraph 55 (Notices).
- (45) Penalty for Late Payment(s). In the event that Valero fails to remit any payment(s) (or portion(s) thereof) described in Paragraphs 43 and 44 within 30 calendar days after the Effective Date, Valero shall be deemed to be in breach of its obligations under this Settlement Agreement. CARB and/or BAAQMD shall provide written notice of the delinquent payment(s) to Valero pursuant to Paragraph 55 (Notices). If Valero fails to remit the delinquent payment(s) (or portion(s) thereof) within ten

(10) business days of CARB's and/or BAAQMD's provision of written notice of the delinquent payment(s), then Valero shall be deemed to be in material breach of its obligations under this Settlement Agreement, and the entire unpaid remainder of the payment(s) (or portion(s) thereof) described in Paragraphs 43 and 44 shall accrue interest at the statutory judgment interest rate provided in Code of Civil Procedure section 685.010, commencing on the first day after the date the payment(s) (or portion(s) thereof) were due.

(46) Compliance With Abatement Order and Elimination of Emissions from Main Hydrogen Vent. Valero shall comply with the requirements of the Order of Abatement entered by the Air District Hearing Board on March 15, 2022, (Dkt. 3731) ("Abatement Order") by blinding H2P017 away from ST-302 through the installation of a metal blind, and rerouting any potential emissions from H2P017 to the flare header (the "ST-302 Abatement Project"), which is expected to require installing one metal blind, eight flanges, six valves, two drains, and less than twenty feet of pipe. Valero shall implement the requirements of this Paragraph 46 as follows:

- (a) Within 30 days of the Effective Date, Valero shall submit, in good faith, a substantially complete and accurate application for all discretionary permits required to implement the ST-302 Abatement Project. With respect to Valero's application for an Air District permit under this subparagraph, the Air District and Valero shall meet and discuss the information required for such permit application within one week following the Effective Date, and the Air District shall answer, within one week of the meeting, any questions that Valero may raise during the meeting to make it reasonably clear what information is required in the application to make it complete.
- (b) BAAQMD agrees to process Valero's permit application expeditiously in accordance with Air District regulations.
- (c) Following submission of its application(s), Valero shall diligently pursue and take all reasonable steps within its control to ensure the timely processing of the necessary permits and approvals required to implement the ST-302 Abatement Project, including by responding as promptly as reasonably possible to requests for additional information requested by applicable governmental agencies. All permits and approvals shall be obtained within 90 days of Valero's submission of a complete ST-302 Abatement Project permit application (the "ST-302 Abatement Project Permit Deadline").

In the event BAAQMD or any agency responsible for issuing the necessary permits or approvals has not issued such permit(s) or approval(s) due to circumstances beyond Valero's reasonable control, the ST-302 Abatement Project Permit Deadline shall automatically be extended until the circumstances beyond Valero's reasonable control that are delaying

issuance of the permit or approval are resolved. If there are multiple causes for delay, some of which are beyond Valero's reasonable control and some of which are within Valero's reasonable control, the deadline extension ends when the circumstances beyond Valero's reasonable control are resolved. For the avoidance of doubt, Valero's failure to timely provide an agency with information requested as part of a permitting process is not a circumstance beyond Valero's control. Valero shall provide written notice to CARB and BAAQMD of any circumstance(s) that will cause Valero to be unable to meet the ST-302 Abatement Project Permit Deadline and upon which Valero bases an extension, as well as the expected duration of the extension, as soon as reasonably possible after Valero learns of such circumstance(s). In addition to the foregoing requirement to provide written notice as soon as reasonably possible, Valero shall inform CARB and BAAQMD if any necessary permit(s) or approval(s) will not be issued by the current ST-302 Abatement Project Permit Deadline for any reason no later than the day before the current ST-302 Abatement Project Permit Deadline, even if Valero is not aware of the cause(s) of the delay.

- (d) Within 30 days after obtaining all necessary permits and approvals to commence construction of the ST-302 Abatement Project, Valero shall commence work on blinding H2P017 away from ST-302. The 30-day deadline applicable under this subparagraph (d) may be extended in writing by CARB and BAAQMD upon a showing of good faith efforts and a reasonable basis by Valero.
- (e) Valero shall complete the ST-302 Abatement Project as soon as reasonably feasible but not later than 60 days after the issuance of all necessary permits and approvals to commence construction of the ST-302 Abatement Project, unless completion of the construction is delayed by a force majeure event as described in Paragraph 62.
- (f) Within 30 days of the completion of the ST-302 Abatement Project Valero shall submit an accurate Piping and Instrumentation Diagram documenting the as-built piping and instrumentation of the finished project. Valero shall allow BAAQMD staff to inspect the construction to confirm that H2P017 has been successfully blinded away from ST-302 in compliance with the requirements of this Agreement.
- (g) The Parties agree and acknowledge that by completing the ST-302 Abatement Project, Valero will be in compliance with the requirements of the Abatement Order.
- (h) Until Valero has completed the ST-302 Abatement Project and is therefore in compliance with the Abatement Order, Valero shall continue to comply

with all monitoring and reporting requirements applicable under the Abatement Order.

(47) Hydrogen Unit Vent Abatement Project. Valero shall route Vents 1A/B, 2A/B, 3A/B, and 4A/B in the Refinery's Hydrogen Units to the base of the north flare, which has sufficient capacity to combust the hydrocarbon emissions of excess hydrogen stream contents as necessary for the continued normal operation of the hydrogen system. Alternatively, at Valero's discretion, Valero may blind some of the Vents 1A/B, 2A/B, 3A/B, and 4A/B as necessary to cease any emissions through those vents to the atmosphere from the Hydrogen Unit, instead of routing those vents to a flare. Therefore, after the completion of the project all of Vents 1A/B, 2A/B, 3A/B, and 4A/B will be either routed to a flare or blinded. Valero shall construct and operate a project to implement the requirements of this Paragraph 47 (the "Hydrogen Unit Vent Abatement Project") as follows:

- (a) Within 6 months of the Effective Date, Valero shall submit, in good faith, a substantially complete and accurate application for all discretionary permits required to implement the Hydrogen Unit Vent Abatement Project, excluding the building permit required by the City of Benicia. With respect to BAAQMD permits, in lieu of submitting a new permit application, Valero may comply with this subparagraph (a) by submitting a revision to Application No. 31881, which it has previously submitted to BAAQMD. With respect to the building permit required by the City of Benicia, Valero will submit the building permit application as soon as reasonably feasible, or at latest within 3 months following BAAQMD's issuance of the Authority to Construct (or within 6 months if BAAQMD or any agency responsible for issuing the necessary permits requires a material change to the scope of the project described in this Paragraph 47). With respect to Valero's application for an Air District permit under this subparagraph, the Air District and Valero shall meet and discuss the information required for such permit application within 60 days following the Effective Date, and the Air District shall answer, within 30 days of the meeting, any questions that Valero raises during the meeting to make it reasonably clear what information is required in the application to make it complete.
- (b) BAAQMD agrees to process Valero's permit application expeditiously in accordance with Air District regulations. With respect to CEQA compliance, the Parties anticipate that the City of Benicia will be the lead agency for purposes of conducting any required CEQA environmental review for the Hydrogen Unit Vent Abatement Project. BAAQMD agrees to work cooperatively with Valero and the City of Benicia to provide information necessary for CEQA analyses.
- (c) Following submission of its application(s), Valero shall diligently pursue and take all reasonable steps within its control to ensure the timely processing

of the necessary permits and approvals required to implement the Hydrogen Unit Vent Abatement Project, including by responding as promptly as reasonably possible to requests for additional information requested by applicable governmental agencies. All permits and approvals shall be obtained within 18 months of the Effective Date (the "Hydrogen Unit Vent Abatement Project Permit Deadline").

In the event BAAQMD or any agency responsible for issuing the necessary permits or approvals has not issued such permit(s) or approval(s) due to circumstances beyond Valero's reasonable control, the Hydrogen Unit Vent Abatement Project Permit Deadline shall automatically be extended until the circumstances beyond Valero's reasonable control that are delaying issuance of the permit or approval are resolved. If there are multiple causes for delay, some of which are beyond Valero's reasonable control and some of which are within Valero's reasonable control, the deadline extension ends when the circumstances beyond Valero's reasonable control are resolved. For the avoidance of doubt, Valero's failure to timely provide an agency with information requested as part of a permitting process is not a circumstance beyond Valero's control. Valero shall provide written notice to CARB and BAAQMD of any circumstance(s) that will cause Valero to be unable to meet the current Hydrogen Unit Vent Abatement Project Permit Deadline and upon which Valero bases an extension, as well as the expected duration of the extension, as soon as reasonably possible after Valero learns of such circumstance(s). In addition to the foregoing requirement to provide written notice as soon as reasonably possible, Valero shall inform CARB and BAAQMD if any necessary permit(s) or approval(s) will not be issued by the current Hydrogen Unit Vent Abatement Project Permit Deadline for any reason no later than the day before the current Hydrogen Unit Vent Abatement Project Permit Deadline, even if Valero is not aware of the cause(s) of the delay. Valero shall provide written reports to CARB and BAAQMD of the status of each delayed permit or approval, including the circumstances surrounding the delay, with each quarterly report required in Paragraph 49 until all necessary permits or approvals have been issued.

- (d) Within 30 days after obtaining all necessary permits and approvals to commence construction of the Hydrogen Unit Vent Abatement Project, Valero shall commence construction, which shall be understood to include, but not be limited to, the ordering of and payment for long-lead equipment. Valero shall place orders for long-lead equipment expeditiously to minimize lead-time delays, and shall arrange for expedited delivery when this option is available and feasible.
- (e) Valero shall complete construction of the Hydrogen Unit Vent Abatement Project and commence operation of the Project as soon as reasonably

feasible but no later than 12 months following the later of: (1) the issuance of all necessary permits and approvals to commence construction of the Project or (2) the close of the next scheduled refinery-wide turnaround, which will be no later than December 31, 2026. The 12-month deadline is contingent on BAAQMD timely granting Valero approval to install tie-ins during the next refinery-wide turnaround and to pre-position certain ancillary equipment such as pumps, knockout drums, and pre-fabricated piping in the field prior to issuance of the full BAAQMD permit. The 12-month deadline may be extended upon written approval of CARB and BAAQMD if the delay in performance qualifies as a force majeure event and Valero complies with the notice requirements in accordance with Paragraph 62.

- (f) Within 30 days of the completion of the Hydrogen Unit Vent Abatement Project, Valero shall submit an accurate Piping and Instrumentation Diagram documenting the as-built piping and instrumentation of the finished project. Valero shall allow BAAQMD staff to inspect the Hydrogen Unit Vent Abatement Project to confirm that it has been successfully completed in compliance with the requirements of this Agreement.

(48) Training on Air District Regulations.

- (a) Valero shall, on a complex-by-complex basis, develop and implement training on Air District regulations applicable to the operation of the various refinery process units within each complex. The training will reinforce and refresh awareness of environmental regulation, and will address permit emission limitations, operating parameters, and general monitoring requirements applicable to the process units.
 - i. Operations Supervisors, Control Board Operators, Process Engineers. Training will be required for Operations Supervisors, Control Board Operators, and Process Engineers in each complex listed in Exhibit 2. Employees in each of these positions on the Effective Date shall be trained on the process units in their respective complex no later than 180 days following the Effective Date. Employees newly assigned to a complex after the Effective Date shall be trained no later than 180 days following the Effective Date, unless there are less than 60 days left in that period, in which case they shall be trained within 60 days following their assignment. Employees newly assigned to a complex more than 180 days after the Effective Date shall be trained within 60 days following their assignment.
 - ii. Refinery Leadership, Environmental Compliance Staff, Shift Superintendents, Process Engineering Manager. Training will also be required for applicable Refinery Leadership,

Environmental Compliance Staff, Shift Superintendents, and Process Engineering Manager, as listed under “Non-Complex Positions” in Exhibit 2. Employees in these positions on the Effective Date shall be trained on each of the five complexes in Exhibit 2 no later than 180 days following the Effective Date. Employees new to these positions after the Effective Date shall be trained no later than 180 days following the Effective Date, unless there are less than 60 days left in that period, in which case they shall be trained within 60 days following their placement in the position. Employees placed in any of these positions more than 180 days after the Effective Date shall be trained within 60 days following their placement in the position.

(b) Valero shall provide CARB and BAAQMD with a copy of all training materials within 120 days following the Effective Date. Training shall be conducted each calendar year starting in 2025, until and including the year following completion of the projects described in Paragraphs 46 and 47. The Parties understand and agree that the training may be structured as a computer-based training (CBT) and that the training materials to be provided may contain Confidential Business Information (CBI). Valero shall identify any CBI in the training materials, and CARB and BAAQMD shall follow the process set forth in California Code of Regulations, title 17, section 91022 in analyzing and treating training material Valero identifies.

(49) Quarterly Reporting. Valero shall provide BAAQMD and CARB with quarterly (every 3 months) progress reports containing an update on the status of implementing the Hydrogen Unit Vent Abatement Project, including (i) the date by which each action required under Paragraph 47 was completed; (ii) an explanation of why any applicable deadlines were not met, or will not be met as well as any approved extensions; (iii) a description of any efforts undertaken to minimize delay in the completion of the Hydrogen Unit Vent Abatement Project; and (iv) a description of any changes to the Hydrogen Unit Vent Abatement Project since the most recent progress report, including a discussion of why such changes are necessary or appropriate. The quarterly progress report shall also include updates regarding the status of compliance with the Abatement Order and the completion of the ST-302 Abatement Project described in Paragraph 46, the status of implementation of training regarding Air District Regulations, and any actual or anticipated delays in payment of any stipulated penalties demanded by BAAQMD and CARB. The first quarterly report shall be due 15 days after the first full three-calendar month period following the Effective Date, then every subsequent report shall be due three months following the previous report.

(50) Stipulated Penalties.

(a) Notice of Noncompliance and Demand for Payment of Stipulated Penalties.

- i. Stipulated penalties, as specified in this Paragraph 50, will start to accrue on the date an alleged non-compliance with / violation of a requirement of this Settlement Agreement occurs or begins. Except as provided in Sub-Paragraphs (a)ii, and (e) below, Valero shall pay any stipulated penalties to BAAQMD and CARB within 30 days of a demand for payment as identified below in the manner set forth in Paragraph 44.
- ii. If Valero identifies possible non-compliance/violation(s), reports it in writing to CARB and BAAQMD within seven calendar days of identifying it (including an explanation of how it was identified), and cures it to BAAQMD's and/or CARB's satisfaction as soon as reasonably practicable, but in no event past 30 days from the date it occurs or begins, BAAQMD and CARB shall not demand stipulated penalties.
- iii. If BAAQMD and/or CARB identify alleged non-compliance/violation(s), BAAQMD and/or CARB may make a demand for the payment of stipulated penalties that identifies the particular noncompliance/violation(s) to which the stipulated penalty relates and the stipulated penalty amount that CARB and/or BAAQMD are demanding for each alleged instance of non-compliance/violation(s). Subject to Sub-Paragraph (a)(i), if stipulated penalties are due and Valero fails to timely cure Valero shall pay stipulated penalties from the 1st day of non-compliance/violation(s) through the date cured.
- iv. CARB and BAAQMD may, in their unreviewable discretion, waive payment of any portion of stipulated penalties that may accrue under this Settlement Agreement, as the circumstances merit. Notwithstanding the stipulated penalty amounts stated below, no penalty may exceed the statutory maximum authorized under California law.

(b) Information Submittals. In the event Valero fails to timely submit the information required in Paragraphs 46.a, 46.c, 46.f, 47.a, 47.c, 47.f, 48, or 49 BAAQMD and CARB may demand a stipulated penalty as follows:

<u>Maximum Penalty Per Day</u>	<u>Escalation Period</u>
\$1,000	1st through 15th day
\$5,000	16th through 30th day
\$10,000	31st day and beyond

(c) ST-302 Project. In the event Valero fails to meet the requirement under Paragraph 46.e to complete all work to fully blind H2P017 from ST-302 by the deadline described in Paragraph 46.e, the District and CARB may demand a stipulated penalty as follows:

<u>Maximum Penalty Per Day</u>	<u>Escalation Period</u>
\$10,000	1st through 7th day
\$20,000	8th through 14th day
\$30,000	15th through 30th day
\$50,000	31st day and beyond

(d) Hydrogen Unit Vent Abatement Project. In the event Valero fails to meet the requirements of Paragraphs 47.d and 47.e to complete construction and commence operation of the Hydrogen Unit Vent Abatement Project by the deadline described in Paragraph 47.e, the District and CARB may demand a stipulated penalty as follows:

<u>Maximum Penalty Per Day</u>	<u>Escalation Period</u>
\$10,000	1st through 7th day
\$20,000	8th through 14th day
\$30,000	15th through 30th day
\$50,000	31st day and beyond

(e) Stipulated Penalties Dispute. Should Valero dispute CARB's and/or BAAQMD's demand for all or part of a stipulated penalty, it may invoke the dispute resolution provisions of Paragraph 64 within the time provided in this Paragraph 50 for payment of stipulated penalties.

(f) Election of Remedies. Where a violation of this Settlement Agreement is also a violation of state law, regulation or a permit, the District or CARB will not seek civil penalties where it already has demanded and/or secured stipulated penalties from Valero for the same violations, nor will the District or CARB demand stipulated penalties from Valero for a Settlement Agreement violation if the District or CARB has commenced litigation for the same violations. CARB and/or BAAQMD may file an action to enforce the terms of this Settlement Agreement and/or any applicable law regardless of whether or not stipulated penalties have been demanded under the Settlement Agreement. In the event of non-compliance with or

violation of the terms of this Settlement Agreement by Valero, to address a particular instance of non-compliance / violation, CARB and/or BAAQMD may file an action seeking both (a) a court order that Valero implement the terms of this Settlement Agreement and any applicable law, and (b) either stipulated penalties pursuant to the terms of this Settlement Agreement, or civil penalties if such violation or instance of non-compliance is also a violation of state law, regulation or a permit. Furthermore, CARB and/or BAAQMD may file an action seeking a court order that Valero implement the terms of this Settlement Agreement and/or any applicable law regardless of whether or not Valero has already paid stipulated penalties pursuant to the terms of this Settlement Agreement regarding any instance of non-compliance with or violation of the terms of this Settlement Agreement that is the subject of CARB's and/or BAAQMD's request for relief.

- (51) No Admission of Liability. Valero is entering into this Settlement Agreement to avoid litigation and does not admit or necessarily agree with the allegations of CARB or BAAQMD, or concede that Valero's actions constituted or arose to a violation and does not admit any liability arising out of or in connection with the occurrences alleged in the CARB and BAAQMD Case Background and Allegations, Notices of Violation and Title V deviations described herein and referenced in Exhibit 1, and any assertions made during the settlement negotiations or otherwise alleged herein.
- (52) Penalties for Unrelated Matters. As with all enforcement cases, the penalty amounts agreed to by the Parties as specified in Paragraphs 43-45 and Paragraph 50 are based on the circumstances and considerations in the context of this Settlement Agreement as a whole. The penalty amounts specified herein are not to be used as a precedential penalty amount for other notices of violation or other proceedings against Valero that are based on different circumstances and considerations. For the avoidance of doubt, CARB and BAAQMD are required to consider both the fact that they alleged the violations of law identified in this Settlement Agreement, and their assessment of the seriousness of those alleged violations, if/when considering Valero's compliance history for purposes of assessing and demanding penalties for any future violations of law by Valero.
- (53) Release and Reservation of Rights.
- (a) In consideration of full payment of the civil penalty, and completion of the undertakings identified in Paragraphs 46-48 above, and in diligent prosecution of claims described herein, this Settlement Agreement resolves, and CARB and BAAQMD hereby release Valero and its principals, officers, receivers, trustees, successors and assignees, from, any and all civil or administrative claims CARB and/or BAAQMD have made or could have made and/or asserted based on the facts, circumstances, and past actions or omissions described in all paragraphs contained in the CARB and BAAQMD Case Background and Allegations above,

in the identified Notices of Violation and Title V deviations described herein and referenced in Exhibit 1, regardless of when the claims accrued.

(b) CARB and BAAQMD also release Valero and its principals, officers, receivers, trustees, successors and assignees from any and all civil or administrative claims CARB and/or BAAQMD could assert based on alleged non-compliance with Regulation 8-2, if any, arising from facility conditions being remediated through the actions required under Paragraph 46 (Compliance With Abatement Order and Elimination of Emissions from Main Hydrogen Vent) that may have accrued from the Effective Date through completion of the actions required under Paragraph 46; provided that during the implementation period Valero undertakes reasonable efforts, in good faith, to avoid or minimize such potential non-compliance, and complies with all applicable requirements of the Abatement Order.

- i. Notwithstanding the resolution of liability in Paragraph 53(b), the release of civil and administrative claims by CARB and BAAQMD for alleged non-compliance addressed in Paragraph 53(b) shall be rendered void if Valero materially fails to comply with the relevant obligations and requirements of Paragraph 46;
- ii. Provided, however, that the releases in Paragraph 53 shall not be rendered void by any allegations of noncompliance with the relevant obligations and requirements of Paragraph 46 if Valero remedies such noncompliance and pays any stipulated penalties due under Paragraph 50(b) or (c) as a result of such noncompliance.

(c) The following reservations of rights apply:

- i. CARB and BAAQMD reserve, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Valero with respect to all matters not expressly resolved in this Settlement Agreement. CARB and BAAQMD reserve all claims, rights, and remedies, whether in law or equity, against Valero with respect to noncompliance with or enforcement of any provision of this Settlement Agreement, subject to Paragraph 50.
- ii. In any subsequent administrative or judicial proceeding relating to enforcement of Paragraphs 46-48 of this Settlement Agreement initiated by CARB and/or BAAQMD for injunctive relief, civil penalties, or other appropriate relief, Valero shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB or BAAQMD in the subsequent proceeding were or should have

been brought in the instant matter, provided, however, that Valero may assert any such defenses that were available to Valero prior to entry into this Settlement Agreement. Except as set forth in this Paragraph 53.b, CARB and BAAQMD may not assert or maintain that this Settlement Agreement constitutes a waiver or determination of, or otherwise obviates, any claim or defense whatsoever, or that this Settlement Agreement constitutes acceptance by Valero of any interpretation or guidance issued by CARB and BAAQMD related to the matters addressed in this Settlement Agreement.

- iii. CARB and BAAQMD further reserve the right to rely upon alleged violations described in the CARB and BAAQMD Case Background and Allegations above, and may offer proof thereof, in connection with any other administrative or judicial proceeding not related to this matter for the purpose of showing a history of violation. Valero further reserves the right to dispute and provide supporting proof that CARB and BAAQMD have not demonstrated that such allegations constitute violations.
- iv. This Settlement Agreement does not limit or affect the rights of Valero, CARB, or BAAQMD against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Valero, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- v. This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Valero is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Valero's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits, except as to the claims CARB and/or BAAQMD have made or could have made and/or asserted that are expressly released in this Paragraph 53 of the Settlement Agreement. Except as identified in this Settlement Agreement, CARB and BAAQMD do not, by their execution of this Settlement Agreement, warrant or aver in any manner that Valero's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

(54) Documents. Valero shall promptly email the signed and dated Settlement Agreement, copies of proof of payment of the penalty and SEP funds, and copies of the Payment Transmittal Forms to the email addresses in Paragraph 55 (Notices).

(55) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address and email below:

For CARB:

California Air Resources Board
Enforcement Division / Settlement
Agreements
District Support Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

Shannon Dilley
Assistant Chief Counsel
California Air Resources Board
Legal Office
1001 I Street
Sacramento, CA 95814
shannon.dilley@arb.ca.gov

Ryan Hoffman
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Ryan.Hoffman@doj.ca.gov

For Valero:

Richard Walsh
General Counsel

Stephanie Hall
Senior Vice President and Deputy
General Counsel

Parker Wilson
Vice President, Regulatory Law
The Valero Companies
One Valero Way
San Antonio, TX 78249

Rich.Walsh@valero.com

For BAAQMD:

Alexander Crockett
General Counsel
Somerset Perry
Assistant Counsel
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
acrockett@baaqmd.gov
sperry@baaqmd.gov

Stephanie.Hall@valero.com
Parker.Wilson@valero.com

Julie Cress
Baker Botts L.L.P.
101 California Street, Suite 3600
San Francisco, California 94111-5802
Julie.Cress@bakerbotts.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing and mailing.

- (56) Repeat Violations. Except as expressly provided in this Settlement Agreement Valero agrees to comply with all applicable regulatory requirements and acknowledges that future violations of the regulatory requirements referenced in the Legal Background above could be deemed repeat violations resulting in increased penalties.
- (57) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties. This Settlement Agreement consists of 32 pages and 76 numbered paragraphs.
- (58) Binding Effect. This Settlement Agreement binds Valero, and any principals, officers, receivers, trustees, successors and assignees; CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement; and BAAQMD and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (59) Effective Date. The Effective Date shall be the date upon which this Settlement Agreement is fully executed.
- (60) Modification and Termination. No agreement to modify, amend, extend, supersede, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement. With the exception of Paragraph 53 (Release and Reservation of Rights) and 68 (Non-waiver), termination of this Settlement Agreement shall occur upon completion of all of the following: (a) Payment of all settlement amounts and any accrued interest described in Paragraphs 43 and 45; (b) Completion of all activities described in Paragraphs 46-48; and (c) Payment of any Stipulated Penalties due as described in Paragraph 50. Valero shall submit written notice to BAAQMD and CARB indicating the foregoing requirements have been met.

- (61) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (62) Force Majeure. Valero shall not be deemed in noncompliance with the Settlement Agreement for any delay to perform the work described in Paragraphs 46-48 that is caused by, or results directly or indirectly from, an event that is beyond the reasonable control of Valero (force majeure event), provided Valero complies with the provisions of this paragraph. To qualify as a force majeure event, an event must have the effect of either significantly delaying labor or materials necessary for work required by this Settlement Agreement from accessing or reaching the Refinery, or otherwise significantly impeding Valero's ability to perform work required by this Settlement Agreement at the Refinery. Such force majeure events include the following: acts of God; enemy or hostile governmental action; uncontrolled pandemics where the State of California declares an emergency; civil commotion (e.g. public protest or riot); fires or other casualties; judicial orders, or governmental controls, regulations or restrictions; inability to timely obtain required authorities to construct or other permits where the delay is attributable to CARB, BAAQMD or another permitting agency, including delay in completion of the CEQA process attributable to CARB, BAAQMD or another permitting agency; delay in the delivery of equipment that is not attributable to action or inaction by Valero; and delivery of damaged or off-specification equipment, all through no fault of Valero, provided Valero demonstrates it conducted due diligence and took all reasonable steps in attempting to avoid the delay. Financial hardship to Valero, by itself, is not a force majeure event. To avoid a determination of default, Valero must notify CARB and BAAQMD of the force majeure event within thirty calendar days of its discovery or notification of the force majeure event, must provide evidence of the force majeure event, and must demonstrate that it has taken or is taking all reasonable action to mitigate any adverse consequences resulting from the delay to perform. If CARB and BAAQMD agree, Valero shall not be deemed in noncompliance with the Settlement Agreement, or subject to any applicable stipulated penalties for the length of time equal to the length of the force majeure event only. Delays that are due to Valero's own action or inaction are not force majeure events. If CARB and/or BAAQMD do not agree that the delay or anticipated delay is due to a force majeure event, they shall notify Valero in writing. Should Valero choose to invoke the dispute resolution provisions in Paragraph 64, it shall do so no later than 30 calendar days after receipt of BAAQMD's and/or CARB's notice denying the force majeure event.
- (63) Choice of Law. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.

(64) Dispute Resolution. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Paragraph shall be the exclusive mechanism to resolve disputes arising between the Parties under or with respect to this Settlement Agreement. The dispute resolution procedures in this Paragraph 64 do not apply to any failure by Valero to pay the settlement amount due pursuant to Paragraphs 43-44 and/or any interest accrued thereon pursuant to Paragraph 45. Valero's failure to seek resolution of a dispute under this Paragraph concerning an issue of which it had notice and an opportunity to dispute under this Paragraph 64 prior to an action by CARB and/or BAAQMD to enforce any obligation of Valero arising under this Settlement Agreement precludes Valero from raising any such issue as a defense to any such enforcement action.

a. Types of Dispute Resolution.

i. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Settlement Agreement shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when a Party or Parties sends all other Parties a written Notice of Dispute in accordance with Paragraph 55 (Notices). Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 45 calendar days from the date the Party or Parties sent its/their Notice of Dispute, unless that period is modified by a written agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by CARB and BAAQMD shall be binding and contractually enforceable unless, within 45 calendar days after the conclusion of the informal negotiation period, Valero invokes the Mediated Dispute Resolution process set forth below.

ii. Mediated Dispute Resolution. Valero shall invoke the Mediated Dispute Resolution process set forth in this Sub-Paragraph, within the time period provided in the preceding Sub-Paragraph, by sending CARB, BAAQMD and the Office of the California Attorney General (legal counsel to CARB) written Notice of Intent to invoke this Mediated Dispute Resolution process. Within 30 calendar days of receipt of Valero's Notice of Intent, the Parties shall jointly select a mutually acceptable mediator and schedule a non-binding mediation session. The mediation session shall occur within 45 calendar days of CARB's and BAAQMD's receipt of Valero's Notice of Intent unless the Parties agree in writing to a different date. At least 15 calendar days prior to the date of the mediation session, Valero shall send CARB, BAAQMD, and the mediator a Statement of Position regarding the matter in dispute. As to CARB and BAAQMD, Valero's Statement of Position shall be sent in accordance with Paragraph 55 (Notices). The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Valero's position and any supporting documentation relied upon by Valero. CARB and BAAQMD shall send Valero and the mediator a Statement of Position at least 5

calendar days prior to the date of the mediation session. As to Valero, CARB's and BAAQMD's Statement of Position shall be sent in accordance with Paragraph 55 (Notices). CARB/BAAQMD's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by CARB/BAAQMD. After the conclusion of the mediation session, the mediator shall make a non-binding recommendation regarding the appropriate resolution of the dispute(s). If any Party or Parties does not accept the mediator's non-binding recommendation, that Party or Parties may file a complaint in accordance with the following Sub-Paragraph. The cost of the mediation session (i.e. mediator fees and facility costs) required by this Sub-Paragraph shall be borne by Valero; other than the cost of the mediation session, the Parties shall pay their own costs of such mediation, including their attorneys' fees associated with preparing for and participating in the mediation.

iii. Judicial Dispute Resolution. A Party or Parties may seek judicial review of the dispute by filing a complaint with the Superior Court of California, located in the County of Solano, and serving it on all other Parties. The complaint must be filed within the earlier of 45 calendar days of the Parties' receipt of the mediator's non-binding recommendation regarding the appropriate resolution of the dispute(s) issued pursuant to the preceding Sub-Paragraph, or within 60 calendar days of the date of the mediation session held pursuant to the preceding Sub-Paragraph. The complaint may not raise any issue the Party or Parties filing the complaint did not raise in informal dispute resolution pursuant to Paragraph 64(a)(i) unless the issue was first raised by another Party's Statement of Position pursuant to Paragraph 64(a)(ii). The complaint shall assert the filing Party's or Parties' position on the matter in dispute. The non-filing Party or Parties shall respond to the complaint in accordance with California law.

(65) Non-Discharge. The Parties understand that the Settlement Amount described in Paragraph 43 of this Settlement Agreement is non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.

(66) Shutdown of Operations. For the avoidance of doubt, Valero shall be free at any time to cease long-term operation of the Hydrogen System and irrevocably relinquish in writing all Air District permits authorizing operations of the Hydrogen System. Upon the completion of such actions and provision of notice to the District and CARB, no further obligations of this Settlement Agreement shall apply to Valero except to the extent that payment is still required under Paragraphs 43-45 or any monies already demanded and currently due under Paragraph 50.

- (67) Rules of Construction. In any dispute(s) brought under this Settlement Agreement, it is hereby expressly acknowledged and agreed that this Settlement Agreement was jointly drafted in good faith by CARB, BAAQMD, and Valero. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Settlement Agreement.
- (68) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. Except as provided in Paragraph 50(f) and subject to the releases in Paragraph 53, the rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (69) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (70) Venue. The Superior Court of California, located in the County of Solano, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (71) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (72) Authority. The undersigned each represent that they have full authority to enter into this Settlement Agreement on behalf of the Party they are representing.

PENALTY BASIS

- (73) Per Unit Penalty. The total penalty in this case is eighty-one million nine hundred sixty-two thousand six hundred and two dollars (\$81,962,602.00 USD). This case was not resolved on a per unit or per day basis.
- (74) Emissions. The provisions cited in this Settlement Agreement prohibit emissions above a specified level. However, without more information it is not practicable to quantify the excess emissions.

- (75) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.
- (76) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Valero or confidential settlement communications.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: _____

Name: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: _____

Bay Area Air Quality Management District

Signature: _____

Name: Philip M. Fine, Ph.D.

Title: Executive Officer/Air Pollution Control Officer

Date: _____

Valero Refining Company - California

(RW)

Signature: 


Name: Richard J. Walsh

Title: Senior Vice President & General Counsel

Date: October 24, 2024

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature:  _____

Name: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: October 28, 2024

Bay Area Air Quality Management District

Signature: _____

Name: Philip M. Fine, Ph.D.

Title: Executive Officer/Air Pollution Control Officer

Date: _____

Valero Refining Company - California

Signature: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: _____

Name: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: _____

Bay Area Air Quality Management District

Signature: 

Name: Philip M. Fine, Ph.D.

Title: Executive Officer/Air Pollution Control Officer

Date: 10/29/2024

Valero Refining Company - California

Signature: 

Name: Richard J. Walsh

Title: Senior Vice President & General Counsel

Date: October 24, 2024

**Exhibit 1
Covered NOVs**

NOV A58465
NOV A59512
NOV A59513
NOV A59514
NOV A59526
NOV A59609
NOV A59627
NOV A60588
NOV A60805
NOV A60806
NOV A62164¹⁰
NOV A62188
NOV A62193
NOV A62194
NOV A62196

¹⁰ This Settlement Agreement covers 3,914 self-identified components out of the 3,956 components referenced in NOV A62164. The remaining 42 components identified in this NOV will be resolved separately through the normal NOV resolution process.

Exhibit 2

Employee Training on BAAQMD Regulations

I. Refinery Complexes, Positions, and Associated Process Units

Complex	Process Units	Positions to be Trained
Complex 1 "A"	FCC, Coker, Cat Lights Ends, Coke Silos, Waste Water	Operations Supervisors Control Board Operators Process Engineers
Complex 1 "B"	Asphalt Plant	Operations Supervisors Control Board Operators Process Engineers
Complex 2	Pipe still, Vacuum Pipe still, Cat Feed Hydrotreater, Sulfur Gas Unit, Virgin Light Ends, Flue Gas Scrubber, Flexsorb	Operations Supervisors Control Board Operators Process Engineers
Complex 3	Oil Movements	Operations Supervisors Control Board Operators Process Engineers
Complex 4	Alkylation, Mogas Reformulation Unit, Diesel Hydrotreater, Reformer, Butamer	Operations Supervisors Control Board Operators Process Engineers
Complex 5	Hydrogen A & B, Hydrocracker, Cogen, Utilities	Operations Supervisors Control Board Operators Process Engineers

II. Non-Complex Related Positions

- A. Refinery Leadership Team
 - i. Refinery Manager
 - ii. Refinery Operations Director
 - iii. Technical Services Director
 - iv. Central Maintenance Director
 - v. HSE Director

- B. Refinery Environmental Compliance Staff
 - i. Environmental Engineering Director
 - ii. Sr. Staff Environmental Engineers
 - iii. Sr. Environmental Engineers
 - iv. Staff Environmental Engineers
 - v. Environmental Engineers
 - vi. Associate Environmental Engineers

- C. Refinery Shift Superintendents

- D. Refinery Process Engineering Manager