

**AGREEMENT GOVERNING THE ACQUISITION  
AND OPERATION OF DELAWARE CITY REFINERY**

This Agreement is entered into this 31st day of May, 2010, between the State of Delaware Department of Natural Resources and Environmental Control (“DNREC”) and Delaware City Refining Company, LLC (“DCRC”) to address and clarify certain environmental regulatory considerations relevant to DCRC’s acquisition and operation of the Delaware City Refinery in Delaware City, Delaware (the “Refinery”).

WHEREAS, The Premcor Refining Group Inc., a wholly-owned subsidiary of Valero Energy Corporation (“Premcor”), currently owns and operates the Refinery;

WHEREAS, Premcor has currently discontinued operations of equipment at the Refinery, and such equipment is undergoing preservation and maintenance activity;

WHEREAS, DCRC has executed an agreement with Premcor pursuant to which DCRC would acquire from Premcor the assets comprising the Refinery, and the Delaware City Pipeline Company, a corporate entity affiliated with DCRC (“DCPC”), has executed an agreement with a Premcor-related entity pursuant to which DCPC would acquire the assets comprising Premcor’s pipeline operations associated with the Refinery, with both agreements subject to certain contingencies specified in such agreements (the “Premcor Agreements of Sale”), and DCRC and Premcor desire to complete these asset transfers upon closing of such transactions (the “Closing”);

WHEREAS, DNREC and DCRC recognize that DCRC’s future operation of the Refinery requires the transfer from Premcor to DCRC of existing permits, authorizations and other regulatory approvals under various environmental statutes and regulations, and the Parties desire to ensure the prompt and lawful transfer of all such Permits within timeframes necessary to allow DCRC to resume operations of the Refinery following the current maintenance turnaround;

WHEREAS, DCRC has identified opportunities to operate the Refinery in a manner consistent with historic operations and future objectives, while achieving environmental benefits through modifications to certain existing Permits and regulations applicable to the Refinery;

WHEREAS, the Parties wish to clarify these permitting, regulatory and permit transfer issues to the extent possible to support the expeditious resumption of operations of the Refinery by DCRC upon the event of Closing and following the maintenance turnaround.

NOW THEREFORE, DNREC and DCRC execute this Agreement to pursue these environmental and economic objectives.

**I. Facility-wide NO<sub>x</sub> Emission Limit**

**A. Basis for Facility-wide NO<sub>x</sub> Emission Limitations**

1. In accordance with the Federal Clean Air Act, 42 U.S.C. § 7401 et seq. (the “CAA”) and the Delaware Environmental Control Statute, 7 Del. C., Ch. 60, the State of Delaware, through DNREC, has promulgated regulations: (a) governing the permitting of certain new sources of air emissions and certain modifications to existing sources of air emissions, 7 Del. Code Regs §1102 (Regulation 1102), (b) establishing comprehensive air quality operating permit requirements, referred to as “Title V Permits,” for major stationary sources of air emissions, 7 Del. Code Regs §1130 (Regulation 1130), and (c) establishing special permitting requirements for the review of proposed new major stationary sources or major modifications at existing major stationary sources of emissions of oxides of nitrogen (“NO<sub>x</sub>”) or volatile organic compounds (“VOCs”), identified as nonattainment “New Source Review” requirements, 7 Del. Code Regs §1125 (Regulation 1125).

2. The United States Environmental Protection Agency (“EPA”) has approved Regulation 1102 (December 7, 2006) and Regulation 1125 (February 7, 2001) for inclusion in Delaware’s State Implementation Plan (“SIP”).

3. Regulation 1125 establishes New Source Review requirements within the air quality control regions in Delaware designated as nonattainment for the National Ambient Air Quality Standard (“NAAQS”) for ground-level ozone, in accordance with the CAA.

4. Regulation 1125 also includes provisions governing implementation of the New Source Review program in those air quality control regions for which the relevant criteria pollutant is designated as in attainment with the NAAQS, and thereby provides for the prevention of significant deterioration (“PSD”) of such air quality controls consistent with standards established under the CAA.

5. Consistent with federal New Source Review regulatory provisions promulgated by EPA under the CAA, DNREC has interpreted Regulation 1125 as affording DNREC the authority to establish facility-wide emission limitations for specific pollutants as the permitting mechanism for ensuring a facility’s compliance with New Source Review requirements.

6. The Parties intend to establish facility-wide emission limitations for NO<sub>x</sub> emissions from the Refinery (the “NO<sub>x</sub> Cap”) as the basis for evaluating the applicability of New Source Review related to NO<sub>x</sub> emissions under Regulation 1125.

7. The Refinery is currently subject to Title V air quality operating permits which impose emission limitations governing numerous parameters, including NO<sub>x</sub>, for specific

air emission sources at the Refinery. The NO<sub>x</sub> emission limits identified in the Title V permit sum, in the aggregate, to more than 5,000 tons per year.

8. The Parties have agreed that the initial NO<sub>x</sub> Cap for the Refinery shall be 2525 tons per year, evaluated over each 12 consecutive month rolling period, commencing with the twelve month rolling period comprised by CY2011. The NO<sub>x</sub> Cap will be further reduced to 2225 tons per year, evaluated over each 12 consecutive month rolling period, commencing with the 12 month rolling period beginning on December 31, 2013 and ending on December 31, 2014. The NO<sub>x</sub> Cap will be further reduced to 1650 tons per year, evaluated over each 12 consecutive month rolling period, commencing with the 12 month rolling period beginning on December 31, 2014 and ending on December 31, 2015.

9. The Parties have also agreed to establish a plantwide applicability limit (“PAL”) for the attainment pollutant, nitrogen dioxide (“NO<sub>2</sub>”), in accordance with applicable PSD requirements under the CAA and Regulation 1125 (the “NO<sub>2</sub> PAL”). DCRC will provide information to DNREC sufficient to establish the NO<sub>2</sub> PAL in accordance with applicable PSD requirements.

10. The Parties acknowledge and agree that the compliance of the Refinery with Regulation 1125 and New Source Review standards with respect to NO<sub>x</sub> emissions shall be based upon the facility’s compliance with the applicable NO<sub>x</sub> Cap and NO<sub>2</sub> PAL, as more specifically addressed herein.

**B. Implementation of the NO<sub>x</sub> Cap**

11. On or before August 15, 2010, DCRC shall submit to DNREC an application to modify the existing Title V operating permits for the Refinery to establish a NO<sub>x</sub>

Cap of 2525 tons per year governing all permitted sources at the Refinery (“Title V Permit Application”).

12. DCRC may propose through the Title V Permit Application to eliminate individual NO<sub>x</sub> emission limitations or operational requirements that relate to a NO<sub>x</sub> limit for specific sources at the Refinery consistent with the criteria established below. DNREC may determine to retain an individual NO<sub>x</sub> emission limitation or operational requirement for a specific source to the extent that:

- a. the limitation or requirement is specifically required for an emission source at the Refinery by an applicable federal New Source Performance Standard, promulgated at 40 CFR Part 60 (“NSPS”), or Maximum Achievable Control Technology requirement, promulgated at 40 CFR Part 61 or Part 63 (“MACT”);
- b. the limitation or requirement was imposed upon the source as a requirement of New Source Review for NO<sub>x</sub> emissions, applicable to the source through a prior permitting determination;
- c. the limitation or requirement was imposed upon the source to avoid applicability of New Source Review for NO<sub>x</sub> emissions, specified for the source through a prior permitting determination;

- d. the limitation or requirement was incorporated into the Delaware SIP as a regulation expressly promulgated to achieve NOx emission reductions required under Title I of the CAA; or
- e. relaxation of the limitation or requirement would result in a modeled exceedance by that source of an ambient air quality standard (“AAQS”) or an increment violation.

13. The Title V Permit Application shall also include the following information:

- a. Designation of the existing conditions of the Title V Permits for which DCRC requests revisions through the application for permit modification, as well as DCRC’s proposed revisions to such provisions.
- b. Proposed methods for evaluating NOx emissions from individual sources, in accordance with Section I.C., below.
- c. Request to establish an initial NOx Cap of 2525 tons per year commencing with the rolling twelve consecutive month period comprised by CY2011, applicable to all sources of NOx emissions identified in the Title V permit, and to further reduce such NOx Cap for the Refinery to 2225 tons per year, commencing with the twelve month rolling period ending December 2014, and to 1650

tons per year, commencing with the twelve month rolling period ending December 2015.

- d. A proposal to establish a NOx emission cap for all NOx emission sources at the Refinery, applicable to emissions from such sources during the period of May 1 through September 30 of each calendar year (the “Ozone Season Cap”). DCRC shall propose the quantity of NOx emissions reflected by the Ozone Season Cap based on consideration of the quantity of NOx emissions for the applicable NOx Cap, the variability of production rates at the Refinery, and the higher production rates anticipated during the May 1 through September 30 time period.

14. DCRC shall submit to DNREC a non-binding plan for achieving NOx emission reductions consistent with the emission limits reflected by each NOx Cap for the Refinery, according to the following schedule:

- a. On or before January 1, 2011, DCRC shall submit to DNREC a non-binding plan reflecting DCRC’s then-current intentions to limit aggregate NOx emissions from permitted sources at the Refinery to 2225 tons per year, commencing with the twelve month rolling period ending in December 2014; and
- b. On or before January 1, 2013, DCRC shall submit to DNREC a non-binding plan reflecting DCRC’s then-current intentions to limit aggregate NOx emissions from permitted sources at the

Refinery to 1650 tons per year, commencing with the twelve month rolling period ending in December 2015.

- c. These plans shall identify DCRC's then-current expectation of NOx emission reductions to be achieved at specific individual sources, along with a statement of the anticipated control measures to be utilized and timelines for achieving such emission reductions. The Parties expressly recognize that the non-binding plans submitted by DCRC under this provision are intended only to reflect DCRC's evaluation of available methods for limiting NOx emissions from permitted sources at the Refinery to the level approved by the relevant NOx Cap, and that such plans are neither binding nor enforceable. Instead, DCRC may determine to achieve compliance within the NOx Caps specified by means that are inconsistent with or contrary to methods identified in plans submitted to DNREC by DCRC under this paragraph, by all legal means.

15. DCRC may elect to implement any lawful means to limit NOx emissions from permitted sources at the Refinery to a sufficient extent to satisfy the NOx Caps and NO<sub>2</sub> PAL established in accordance with this Agreement; provided however that DCRC shall not remove any NOx emission control device, nor eliminate practices that are designed to reduce NOx emissions, existing as of the Effective Date, except in the event that DCRC installs a replacement NOx emission control device or practices designed to reduce NOx emissions for the source (after undertaking any appropriate permit process for any modification of the source), or



the source no longer emits NO<sub>x</sub> at a rate for which emission controls can be justified . This provision shall not restrict DCRC from adjusting the manner in which it utilizes any existing NO<sub>x</sub> emission control device, including by reducing the degree or extent of NO<sub>x</sub> emission control achieved by such device while maintaining compliance with all other applicable requirements.

16. To the extent that DCRC determines to implement any activity relevant to its compliance with any NO<sub>x</sub> Cap, and such activity requires prior authorization (“Approval”) from DNREC or any other federal, state or local agency, authority, board or other governmental instrumentality (“Government Authority”), then DCRC will timely apply for and make all reasonable efforts to obtain in a timely manner all appropriate Approvals (or determinations that no such Approvals are necessary or will be waived) for the construction or implementation of the activity relevant to DCRC’s compliance with the NO<sub>x</sub> Cap. Following submittal of its application for the necessary Approval(s), DCRC shall cooperate with the appropriate Government Authority by promptly submitting any additional information reasonably required by such Government Authority to process the pending application.

17. In the event that, notwithstanding DCRC’s compliance with paragraph 16, a relevant Government Authority does not issue to DCRC, in a final form, any Approval determined by DCRC or such Government Authority to be necessary for DCRC’s lawful construction and/or operation of the relevant activity, then DCRC’s obligation to comply with the relevant NO<sub>x</sub> Cap shall be extended to the extent of the delay in securing the relevant Approval. For purposes of this paragraph, DCRC shall not be relieved of the compliance dates otherwise established for NO<sub>x</sub> Caps addressed herein by objecting to an Approval except to the extent that DCRC files a timely challenge or appeal, as applicable (“Appeal”), to such Approval,

that DCRC files such Appeal in good faith, and the specific challenges raised by DCRC through the Appeal materially bear upon and jeopardize DCRC's ability to comply with the NOx Cap set forth in this Agreement. Further, DCRC commits to pursue an expeditious resolution of such Appeal, to the extent that procedures for expedited resolution are available for the subject Appeal.

18. Following its review of the Title V Permit Application, DNREC will provide to DCRC a proposed draft modified Title V permit consistent with the provisions of this Agreement. The Parties commit to work cooperatively to secure the expeditious issuance of the final revised Title V Permit (the "Modified Title V Permit").

19. In the event that DCRC proposes to construct a new source of NOx emissions or modify an existing source, as such terms are defined under Regulation 1102, then DCRC shall submit to DNREC an application to construct or modify an air emission source, to the extent otherwise required by Regulation 1102.

**C. Source-Specific NOx Emission Determinations**

20. In order to demonstrate compliance with the NOx Caps, DCRC shall determine, on a monthly basis, NOx emission rates for each NOx emission source at the Refinery with emissions above relevant thresholds identified in Regulation 1102, in accordance with the provisions of this subpart.

21. To the extent that an applicable federal regulatory standard specifies that NOx emissions from specific sources at the Refinery must be measured by continuous emission monitoring systems ("CEMS"), DCRC shall utilize CEMS in accordance with the applicable federal regulatory standards to measure the quantity of NOx emissions from such sources for

purposes of demonstrating compliance with the NOx Cap. Notwithstanding the foregoing, to the extent that any applicable federal regulatory standard governing the operation of a NOx CEMS at the Refinery requires data substitution methods relevant to compliance demonstrations under such applicable federal regulatory standard, DCRC need not utilize such data substitution procedures to determine NOx emission rates from the relevant source at the Refinery during any period of CEMS outage or out-of-control periods, if DCRC can identify an alternative basis for estimating NOx emissions from such source during such period of CEMS outage or out-of-control.

22. To the extent that a NOx emission source at the Refinery is currently equipped with a CEMS to monitor NOx emissions, then DCRC shall continue to operate such CEMS in accordance with applicable standards to measure the quantity of NOx emissions from such source for purposes of demonstrating compliance with the NOx Cap. For purposes of demonstrating compliance with the NOx Caps, the Parties do not currently anticipate that any additional CEMS shall be required for any existing NOx emission source at the Refinery, absent a new requirement for NOx CEMS imposed through a change in regulation or a modification to an existing NOx source at the Refinery.

23. For each emissions unit at the Refinery currently equipped with a CEMS for NOx and required to operate such CEMS pursuant to paragraph 21 or 22, within 150 days of re-starting such emission unit, DCRC shall take such action as may be necessary and appropriate to ensure the continued accuracy of the NOx emissions monitored and recorded by the relevant CEMS data acquisition and handling system (“DAHS”). Thereafter, DCRC shall satisfy the QA/QC requirements specified for CEMS in the Refinery’s Title V permit.

24. To the extent that any applicable regulatory standard requires DCRC to conduct performance testing for NO<sub>x</sub> emissions for a specific source at the Refinery, DCRC shall determine the NO<sub>x</sub> emission rate for such source based upon the NO<sub>x</sub> emission factor derived from the most recent performance test conducted in accordance with the applicable regulatory standard; provided however that DCRC may, at its election, conduct performance testing in addition to that required by applicable standards to establish a lower NO<sub>x</sub> emission factor for such source to be used in demonstrating compliance with the NO<sub>x</sub> Caps, provided however that DCRC must secure advanced approval from DNREC of any proposed adjusted NO<sub>x</sub> emission factor. DNREC shall approve or disapprove any request made by DCRC for an adjusted emission factor within 90 days of receiving information from DCRC sufficient to allow DNREC to determine the acceptability of such adjusted emission factor.

25. For any permitted NO<sub>x</sub> emission source at the Refinery that is not required to determine NO<sub>x</sub> emission rates by operations of a CEMS or by conducting performance testing pursuant to paragraphs 21, 22 or 24, DCRC shall determine NO<sub>x</sub> emissions for such source in accordance with the Modified Title V Permit, for purposes of demonstrating compliance with the NO<sub>x</sub> Caps. DCRC shall propose through its Title V Application one of the following compliance demonstration methods:

- a. Installation and operation of CEMS;
- b. Determination and use of NO<sub>x</sub> emission factor based upon the results of the most recent performance testing conducted in accordance with a protocol approved by DNREC, or performed in accordance with

applicable performance testing methods established and published by EPA and appropriate for measuring NOx emissions from the relevant source;

- c. Published NOx emission factors for such source or category of sources;
- d. Any other method approvable by DNREC.

26. For purposes of demonstrating compliance with the NOx Caps, DCRC shall account for NOx emissions from permitted sources during all periods of startup, shutdown or malfunction of such equipment. To the extent that such emission rates are not measured by CEMS during such periods of startup, shutdown or malfunction, and to the further extent that performance testing for such source did not establish emission factors for such equipment reflective of operations during periods of startup, shutdown or malfunction, then DCRC shall estimate such emission rates from such source during any periods of startup, shutdown or malfunction in accordance with best engineering judgment, provided however that DCRC must report to DNREC the basis for DCRC's emission projections in such instance, and DNREC may object to DCRC's emission estimation methodology. In such event, the Parties shall work cooperatively to resolve any such dispute concerning the propriety of such emission calculation method. Nothing in this paragraph shall be construed to waive, limit or otherwise restrict DNREC's ability to bring an enforcement action against DCRC for compliance with the NOx Cap should DCRC operate prior to resolving any dispute with DNREC regarding the propriety of any emission calculation method, but subsequent to DNREC's notification to DCRC of DNREC's objection to DCRC's emission calculation method, where DCRC would not have complied with the applicable NOx Cap but for its reliance on such emission calculation method.

**D. Recordkeeping and Reporting**

27. On or before July 1, 2011, DCRC shall submit to DNREC a report of the annual NOx emissions for NOx emission sources at the Refinery, for the twelve (12) month period ending with May 31, 2011.

28. On or before January 31, 2012, and every six months thereafter, or in accordance with a similar schedule established in the modified Title V permit, DCRC shall submit to DNREC a report of the annual NOx emissions for NOx emission sources at the Refinery, determined in accordance with the methods identified in Section I.C., above for each rolling twelve (12) month period concluding during the prior semiannual period.

29. DCRC shall maintain, for a period of five (5) years from the date of the compliance demonstration for each NOx Cap, records necessary to demonstrate compliance with the NOx Caps established in accordance with this Agreement. To the extent that DCRC determines NOx emission rates by use of CEMS, then such records shall consist of the data generated by the DAHS associated with the CEMS. Where NOx emissions are determined in accordance with emission factors derived from performance testing, DCRC shall maintain copies of all performance tests, as well as the hours of operation and throughput rate for relevant sources, to the extent applicable to determining NOx emissions for such sources. To the extent that DCRC determines NOx emissions for a specific source based upon published emission factors, then DCRC shall maintain copies of the information constituting the source of such emission factors, as well as records of the operating hours and/or throughput rate for such equipment, to the extent applicable to the determination of NOx emission rates for such source. DCRC shall maintain records of all periods of startup, shutdown and malfunction of permitted NOx emission sources at the Refinery, in addition to such other information concerning such

startup, shutdown or malfunction event necessary to determine emissions from such source in accordance with Section I.C. of this Agreement.

**E. Compliance Evaluations Under NOx Caps**

30. The Parties intend that the Modified Title V Permit issued under this Agreement shall establish the compliance obligations applicable to the Refinery relative to NOx emissions from permitted emission units at the Refinery. However, no NOx Cap or NO<sub>2</sub> PAL shall become applicable to the Refinery prior to issuance of the Modified Title V Permit. DCRC's compliance with the NOx Caps established under this Agreement and the Modified Title V Permit shall ensure DCRC's compliance with nonattainment-New Source Review, PSD requirements and Regulation 1125 relative to NOx emissions. For purposes of implementing the NOx Caps, the Parties agree that no change to Delaware regulations other than Regulation 1142 will be required.

31. DCRC's compliance with each NOx Cap shall be determined based upon the aggregate NOx emission rates reported by DCRC for relevant sources during each twelve month rolling period, determined in accordance with Section I.C. of this Agreement.

32. To the extent Premcor has generated and/or preserved at the Refinery net emission reductions for any regulated pollutant other than NOx, and such net emission reductions have either been established as creditable emission reductions, or otherwise meet the criteria to be established as creditable emission reductions, pursuant to Regulation 1125, then such net emission reductions are preserved and transferred to DCRC for use in accordance with Regulation 1125, including in the context of any permitting and/or new source review/PSD

applicability determination relative to the construction, modification or reconstruction of any emission unit at the Refinery.

**F. Relationship to Other Regulations**

33. Prior to the creation of any NOx Cap for the Refinery, DNREC had promulgated Specific Emission Control Requirements for NOx emissions from identified sources at the Refinery, at Title 7, Regulation No. 1142 (“Regulation 1142”). Consistent with the objective of establishing a NOx Cap for the Refinery, the Parties agree that Regulation 1142 should be revised to reflect that the owner or operator of a refinery source of NOx emissions listed in Regulation 1142 may elect to comply with an NOx Cap established by DNREC for such Refinery, in lieu of complying with certain specific NOx emission limitations otherwise established through Regulation 1142.

34. DNREC therefore agrees to propose and promulgate in accordance with Delaware law revisions to Regulation No. 1142 consistent with the provisions of this Agreement. On or before September 1, 2010, DNREC will initiate any applicable procedural requirements to promulgate revisions to Regulation No. 1142 consistent with the provisions of this Agreement.

35. DNREC will submit to EPA a request to modify the Delaware SIP to reflect the revised version of Regulation No. 1142 identified in paragraph 34, and take all actions necessary to support and secure the requested SIP revision. DCRC agrees that it will not file any legal objection or challenge to DNREC’s proposed revised version of Regulation No. 1142 or corresponding proposed SIP revision, if such proposed revisions are consistent with the provisions of this Agreement.



36. DNREC acknowledges that it does not currently contemplate the promulgation of any regulation requiring, or other legal standard having the effect of requiring, NOx emission reductions from the Refinery, except as otherwise provided by this Agreement.

## **II. Additional Air Quality Considerations**

### **A. Coke Storage**

37. DCRC's future operation of the Refinery in substantially the same manner as operated by Premcor would result in the production of petroleum coke from the Fluidized Coking Unit ("FCU"). DCRC will undertake to construct and/or modify a coke management control system with the objectives of minimizing the generation of fugitive coke dust and preventing migration of any airborne fugitive coke dust beyond the property boundary of the Refinery in a quantity and form that would otherwise cause air pollution, as defined at 7 Del. Code Regs §1101, or cause or contribute to monitored exceedances of the State's AAQS for total suspended particulates ("TSP").

38. As and to the extent required by applicable regulatory standards, DCRC will submit to DNREC an application for air quality construction and/or operating permit authorizing the construction and modification of equipment to effectuate the purposes of paragraph 37. DNREC will thereafter undertake all actions necessary to issue the final air quality permit authorizing DCRC to proceed with the actions contemplated for implementation of enhanced coke management at the Refinery (the "Coke Storage Permit") in accordance with Delaware law.

39. DCRC will not operate the FCU in a production mode in a manner that produces material quantities of petroleum coke prior to receiving the Coke Storage Permit from

DNREC and constructing and commencing operation of the equipment authorized by such permit to support the effective management of petroleum coke in accordance with paragraph 37.

40. Premcor has operated existing ambient air quality monitoring stations at and around the Refinery in order to measure ambient concentrations of TSP. During the current maintenance turnaround of the Refinery, DCRC shall not be required to continue to operate or maintain such ambient air quality monitors. In addition, DCRC may propose, for DNREC review and approval, a new location for any existing ambient air quality monitor. Following resumption of operation of the FCU and associated production of petroleum coke, DCRC will resume operation of the ambient TSP monitors. DCRC will continue to operate the existing ambient TSP monitors until the date on which DCRC has collected data that demonstrates attainment for one year at the ambient TSP monitors with the Delaware AAQS for TSP.

**B. Propane Storage**

41. DCRC will not introduce any propane gas produced at the Refinery into the existing underground Frozen Earth Storage (“FES”) unit at the Refinery, which is currently undergoing closure activities undertaken by Premcor. The completion of closure of the FES unit will remain the responsibility of Premcor. DCRC will ensure adequate capacity for propane storage, exclusive of the FES unit, for the quantity of propane gas that DCRC intends to produce and store at the Refinery.

**C. Completion of Repair of LDAR Components**

42. Certain pumps, valves and flanges in gaseous or light liquid service at the Refinery are subject to federal and/or state regulatory standards governing leak detection and repair (“LDAR”). In the course of implementing its LDAR program for regulated components at

the Refinery, Premcor identified certain components which exhibited leak rates above action levels, but for which Premcor determined it necessary and appropriate to place such components on the “delay of repair” list. Prior to resuming full-scale production operations of the Refinery, DCRC shall perform repairs of all regulated LDAR components at the Refinery which had remained on the delay of repair list developed by Premcor, to the extent that Premcor identified to DCRC that such component remained on the delay of repair list as of Closing, and to the further extent that DCRC would resume the use of such component in a manner that would subject it to federal or state regulatory standards under applicable LDAR regulations.

### **III. Water Quality and Discharge Matters**

#### **A. Discharge Permit**

43. DNREC previously issued to the Refinery National Pollutant Discharge Elimination System (“NPDES”) permits designated by permit numbers DE005061 and DE0000256, authorizing the operation of water intake structures and the discharge of process and non-process wastewater from the Refinery (the “Discharge Permits”).

44. More than six months prior to the expiration date identified for the NPDES permit applicable to primary Refinery operations, the then-current owner of the Refinery, Motiva Enterprises LLC (“Motiva”), had submitted to DNREC an application for renewal of the discharge permit. More than six months prior to the expiration date identified for the NPDES permit applicable to operations of the power plant at the Refinery, Premcor had submitted to DNREC an application for renewal of the discharge permit. The Refinery’s applications for reissuance of the Discharge Permits remain pending before DNREC.

45. In accordance with applicable federal and state law, the Discharge Permits are administratively extended and continue to authorize the operation of intake structures and discharges of both process and non-process wastewater from the Refinery to navigable waters in accordance with the terms of the Discharge Permits. Through the permit transfer provisions otherwise addressed in this Agreement, the Parties intend that these administratively-extended Discharge Permits will be transferred to DCRC, and continue to authorize the operation of intake structures at, and the discharge of process and non-process wastewater from, the Refinery in accordance with the terms of the Discharge Permits, until such time as DNREC reissues the Discharge Permits for the Refinery in accordance with the process described in the following paragraphs.

46. Five months before the date that DCRC intends to resume normal operations of the Refinery, DCRC will endeavor to submit, and in any event on or before December 31, 2010, DCRC will submit, to DNREC an update to the pending applications for the renewal of the Discharge Permits, to the extent required by applicable law and necessitated by DCRC's intended changes to operation of the Refinery, relative to that reflected in the pending application for renewal of the Discharge Permits (the "Updated Application").

47. Prior to issuing any new Discharge Permits, DNREC shall provide to DCRC a proposed draft permit (the "Draft New Discharge Permit"). The Draft New Discharge Permit will be based upon information in the existing applications for renewal of the Discharge permits, information provided by DCRC through the Updated Application, relevant information provided to DNREC and applicable federal and state guidance and law.

48. The Draft New Discharge Permit will include a best technology available determination (“BTA determination”) reflecting DNREC’s best professional judgment to address section 316b of the federal Clean Water Act related to the design and operation of the cooling water intake structure. In making the BTA determination, DNREC will consider federal and state law, including applicable federal case law, regulations and guidance, and specifically address cost considerations when making the determination. The Draft New Discharge Permit will include a compliance schedule for implementation of the BTA determination which will require DCRC to take such actions as necessary to construct the BTA during the five year period following the first five years of the New Discharge Permit term, as defined below. The Draft New Discharge Permit compliance schedule will also authorize DCRC to undertake a study/evaluation, during the five year term of the New Discharge Permit, to analyze site-specific, environmental and technology-based factors relevant to the benefits of alternatives to the BTA determination (“DCRC’s BTA Evaluation”). To the extent that DCRC determines that an alternative BTA standard is supported by DCRC’s BTA Evaluation, conducted during the first five years of the New Discharge Permit, then DCRC may submit to DNREC, as an attachment to its application for renewal of the New Discharge Permit, its proposal for, and the basis of, an alternative BTA determination. DCRC shall not be required to construct the BTA as determined in the New Discharge Permit, until DNREC notifies DCRC of the conclusions of DNREC’s reevaluation of the BTA determination, given consideration of DCRC’s alternative BTA standard.

49. Within 30 calendar days of receiving the Draft New Discharge Permit from DNREC, DCRC will provide to DNREC any comments, corrections, questions or proposed revisions concerning the Draft New Discharge Permit. The Parties will address such comments,

questions and proposed revisions consistent with the terms of this Agreement. Following completion of such process, DNREC will take all necessary procedural steps to formally issue the Draft New Discharge Permit as a final renewal of the Discharge Permits. The final new discharge permit (the “New Discharge Permit”) may vary from the Draft New Discharge Permit based on consideration of relevant and applicable comments garnered from the public notice process such as comments from EPA, the public or DCRC, as required by law.

50. DCRC shall comply with requirements of the Delaware River Basin Commission Docket No. D-93-4-6 for taking any such actions necessary to reduce, by December 31, 2013, the quantity of surface water drawn from the Delaware River at the primary cooling water intake structure from 452 million gallons per day (“mgd”) to 303 mgd, measured as a 12 month rolling average.

51. To the extent otherwise enforceable under applicable state and federal laws and regulations, DCRC shall comply with all obligations of the Delaware River Basin Commission (“DRBC”) and the Delaware River Estuary PCB Total Maximum Daily Loads (“TMDLs”). These requirements include, but are not limited to, implementing and annually updating the PCB Pollutant Minimization Plan and PCB Congener Monitoring with the objective of identifying any sources of PCB discharge, in accordance with the “Implementation Plan for Polychlorinated Biphenyls (“PCBs”) For Zones 2-6 of the Delaware Estuary.”

**B. Dredging Activity**

52. DNREC previously issued to Premcor a permit (the “Dredging Permit”) authorizing the maintenance dredging of sediment both in the berthing area and the navigation channel located within the Delaware River adjacent to the Refinery (the “Berthing Area and

Navigation Channel”), and the maintenance dredging of a tidal channel which conveys water to the primary cooling water intake for the Refinery (the “Cooling Water Intake Channel”).

53. Prior to the expiration of the Dredging Permit, Premcor submitted to DNREC an application to renew the Dredging Permit. Such application remains pending before DNREC.

54. Within five days of the Effective Date, DCRC shall submit to DNREC information confirming that DCRC requests issuance of the dredging permit in a form materially consistent with the terms of the pending application submitted by Premcor, including a request for a 10 year permit. In accordance with this Agreement, the Refinery’s pending application to conduct maintenance dredging in the Berthing Area and Navigation Channel and associated with the Cooling Water Intake Channel shall then be transferred to DCRC.

55. On or before June 15, 2010, DNREC will conclude its administrative process and take action on the permit application referenced in the foregoing paragraphs for the dredging activity in the Berthing Area and Navigation Channel and the area associated with the Cooling Water Intake Channel (the “DCRC Dredging Permit”).

56. DNREC anticipates that the DCRC Dredging Permit will authorize requested dredging activity for a period of ten years, and require the payment by DCRC of fees or compensation, as follows:

- a. To the extent that dredging during any event authorized under this DCRC Dredging Permit exceeds the depths previously authorized under Subaqueous Lands Permit SP-320/04 and Water Quality Certification

WQ-320/04, then DCRC shall pay to the State of Delaware a fee of \$1.50/cubic yard for the amount of material dredged in excess of the amount that would have been dredged at the depths previously authorized under Subaqueous Lands Permit SP-320/04 and Water Quality Certification WQ-320/04; and

- b. DCRC shall pay a one-time amount of \$247,500 (for the creation and restoration of wetland habitat), by September 1, 2012, as compensation based on DNREC's determination of adverse environmental impacts to benthic organisms and habitat that DNREC believes could result from the proposed dredging activity in the Berthing Area and Navigation Channel during the ten year term of the DCRC Dredging Permit; and
- c. During each year in which dredging is conducted in the Cooling Water Intake Channel, DCRC shall be obligated to pay \$135,000 per year, as compensation, based on DNREC's determination of secondary adverse impacts to aquatic resources that DNREC believes could result from the proposed dredging activity in the Cooling Water Intake Channel the ("Aquatic Resources Mitigation Compensation"). DCRC may remit the Aquatic Resources Mitigation Compensation to DNREC following the end of the first five years of the DCRC Dredging Permit (i.e., years six through ten of the term of the DCRC Dredging Permit) in increments of \$270,000 annually. Without limitation to its option to remit payments during years six through ten rather than years one through ten, DCRC may elect to remit its payments to a dedicated account controlled by



DCRC, rather than to DNREC (the “Mitigation Compensation Account”). All funds placed by DCRC in the Mitigation Compensation Account must be expended toward construction of BTA, determined for the cooling water intake structure in accordance with Section II.A, above, or directed to DNREC by the expiration date of the DCRC Dredging Permit or the transfer of the controlling interest in the Refinery from DCRC to any independent third party, whichever occurs first; and

- d. By execution of this Agreement, DCRC does not thereby concur that the proposed dredging activity would cause adverse environmental impacts, that any adverse environmental impacts resulting from such dredging warrant or require compensation under applicable law, that any dredging activity would cause indirect adverse environmental impact or that any such indirect adverse environmental impact implicates the need for or requirement of mitigation under applicable law.

57. On or before June 15, 2010, DNREC will conclude its administrative process and take action on the Federal Consistency Certification concerning the dredging activity authorized by the DCRC Dredging Permit.

#### **IV. Regulatory Status of Refinery During Maintenance Activities**

58. Premcor had stated its intention to permanently cease operations of primary refinery operations at the Refinery. Prior to reaching agreement with DCRC for the sale of the assets comprising the Refinery, Premcor initiated the temporary cessation of operations at the Refinery, pending implementation of a program to permanently cease operations. In the

context of its efforts to ensure the safety and environmentally protective re-start of Refinery operations, DCRC intends to perpetuate the maintenance turnaround of equipment at the Refinery to ensure that the re-start of such equipment can be performed in a safe and environmentally protective manner.

59. DNREC interprets the existing Title V Permits for the Facility, and will interpret the Modified Title V Permit for the Refinery, not to require compliance with monitoring, reporting, recordkeeping or operational standards identified for emission sources at the Refinery during the periods that such sources are not operating, on the basis that such requirements are intended to apply during operation of the relevant emission units.

60. DNREC characterizes the on-going activity at the Refinery initiated by Premcor and to be continued by DCRC as not inconsistent with historic practices at the Refinery.

61. In this context, raw materials, product, feedstock and other materials associated with production operations at the Refinery (collectively, “Materials”) shall not be deemed to constitute waste material, pending a determination by DCRC (to be made within 3 months of Closing) that any such Materials do not constitute usable product or raw materials. Upon any such determination, regulatory standards applicable to the proper characterization of the waste material would be initially triggered, including the commencement of waste accumulation periods under applicable standards.

62. Similarly, material transfers among tanks and tank systems at the Refinery will be deemed to continue during the maintenance turnaround operations for purposes of federal and state storage tank regulatory standards. Accordingly, except as addressed in separate notifications or registrations submitted to DNREC by Premcor since Premcor’s initiation of the

current maintenance turnaround activity at the Refinery, the regulated storage tanks and tank systems at the Refinery shall not be deemed to have experienced a change in use, nor to have been temporarily or permanently closed, during the ongoing maintenance activity at the Refinery, for a period not to exceed June 1, 2011 (unless extended by DNREC upon request by DCRC).

63. Based upon the State's characterization of the status of activities at the Refinery, Premcor's temporary cessation of operations shall not constitute an abandonment of the pre-existing industrial operation, and the equipment and operations at the Refinery will be deemed as a pre-existing use for purposes of the Delaware Coastal Zone Act, 7 Del. C., Ch. 70. Therefore, assuming that DCRC restarts refining operations prior to March 1, 2012, the re-start of such operations by DCRC following the maintenance turnaround shall not constitute a new activity in the Delaware Coastal Zone requiring the need for any Coastal Zone Act approvals or status decisions.

**V. Resolution of Outstanding Compliance Orders and Agreements Relevant to the Refinery**

64. The Parties recognize that DNREC has initiated certain enforcement actions alleging non-compliance at the Refinery under various state and federal environmental statutes and/or regulations, and otherwise identified conditions of potential non-compliance based upon activities of owners and/or operators of the Refinery other than DCRC. DNREC acknowledges that any such enforcement activity, whether or not formally initiated, does not relate to any operations or activities by or on behalf of DCRC. This provision does not relieve DCRC of liability for any alleged noncompliance that may result from DCRC's operations at the refinery after Closing.

65. DNREC hereby confirms that any prior enforcement action initiated by it against any owner or operator of the Refinery, other than DCRC, including in the form of any citations, notices, orders, complaints, investigations, enforcement agreements, or any other form of allegations of noncompliance, whether administrative, civil, criminal, judicial or otherwise (collectively, “Enforcement Actions”), concerning the Refinery does not apply to DCRC’s operations at the Refinery, is not transferred in any manner to DCRC, and does not impose any continuing obligations applicable to DCRC, except as expressly identified below:

- a. Conciliation Order in the matter of the Premcor Refining Group Inc. – Frozen Earth Storage, Secretary’s Order No. 2008-A-0051 (September 25, 2008);
- b. Consent Order in *Nicholas A. Di Pasquale v. Motiva Enterprises, LLC*; Civil Action No. 18750 NC in the Court of Chancery of the State of Delaware in and for New Castle County (3/26/01) (the “18750 Order”).

With respect to the 18750 Order, the Parties acknowledge that the substantive obligations under such Consent Order have been satisfied, and DNREC will file a motion requesting the Court to terminate the 18750 Order within approximately 30 days of the Effective Date.

66. Consistent with the foregoing, DNREC acknowledges that, to the extent allowable by law, any alleged non-compliance at the Refinery prior to Closing would not bear upon the evaluation of the status of DCRC relative to the “chronic violator” designation identified in 7 Del. C., Ch. 79.

67. The Parties acknowledge that State of Delaware has executed consent decrees by and among the State, the United States and Motiva, to which Premcor has become a party, and that such consent decrees have been entered by the Federal District Courts for the Southern District of Texas<sup>1</sup> and the District of Delaware<sup>2</sup> (collectively, the “Federal Consent Decrees”). The Parties further acknowledge that DNREC cannot unilaterally terminate the Federal Consent Decrees and, pursuant to the express terms of the Federal Consent Decrees, DCRC may become a party through addenda to the Federal Consent Decrees, and thereby be bound by any residual obligations imposed thereby.

68. The Parties believe that any obligations otherwise applicable to the Refinery under the Federal Consent Decrees have been substantively satisfied. Therefore, shortly following the Closing, DCRC intends to work with Premcor and, as appropriate, Motiva, to petition the Court for termination of the Federal Consent Decrees. DNREC will use its best efforts to support DCRC’s efforts in this context.

## **VI. Transfers of Applicable Permits and Authorizations**

69. Operation of the Refinery is governed by numerous permits, licenses and other authorizations relevant to specific equipment, media and regulatory programs.

70. The Parties intend to accomplish the prompt transfer from Premcor to DCRC of all existing permits, authorizations, approval, licenses, and other sources or grants of authority relevant to the operation or status of the Refinery (collectively, the “Authorizations”). In order to accomplish this prompt transfer of all relevant Authorizations, the Parties have

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<sup>1</sup> United States v. Motiva Enterprises, LLC, Civil Action No. H-01-0978, S.D.Tx. (Consent Decree originally entered August 20, 2001), *as amended*.

compiled a table of Authorizations subject to and requiring transfer, which is included as Attachment “A” to this Agreement. The table included with Attachment A also identifies the specific procedure that shall be utilized to accomplish the transfer of the Authorizations.<sup>3</sup> Although the Parties have attempted to ensure the accuracy and completeness of the relevant table of Authorizations identified in Attachment A, due to the extent of such Authorizations, the Parties acknowledge that such list may not be fully complete and accurate. To the extent necessary for completeness and accuracy, DNREC will amend the table of Authorizations included within Attachment A within 30 days of Closing.

71. Based on its knowledge of the operations at the Refinery conducted by Premcor, DNREC has not identified any additional permit, authorization, approval, license, status decision or other sources or grants of authority, other than the Authorizations, required by DCRC to own or operate the Refinery in a manner substantially similar to the operations conducted by Premcor. To the extent that either Party identifies any additional requisite license, authorization, permit, approval, status decision, or other source or grant of authority, (collectively, “Other Necessary Approval”), then the Parties shall work cooperatively to secure issuance or transfer of such Other Necessary Approval as promptly as possible.

72. For purposes of satisfying any requirements as to the Environmental Permit Application Background Statement under 7 Del. C., Ch. 79 (“Chapter 79”) relevant or applicable to the transfer to DCRC or DCPC of Authorizations or Other Necessary Approvals,

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<sup>2</sup> United States v. Motiva Enterprises, LLC, Civil Action No. 02-1292-SLR, and Department of Natural Resources and Environmental Control v. Motiva Enterprises, LLC, Civil Action No. 02-1293-SLR, D.Del. (Consent Decree entered January 12, 2006.)

<sup>3</sup> The table included within Attachment A identifies certain subaqueous land leases. As of the Effective Date, Premcor continues to pursue certain modifications and clarifications of these subaqueous land leases. Following Premcor’s appropriate modification, clarification or reinstatement of such subaqueous land leases, Premcor will

DNREC has determined that the appropriate permit applicant shall initially be identified as the Delaware City Refining Company, LLC, or Delaware City Pipeline Company, as applicable, and all information to be supplied to DNREC under Chapter 79 shall be limited to DCRC or DCPC, as applicable, its officers, directors and subsidiaries, and not extend to any individual partners, shareholders or other related corporate entities.

73. To the extent that the transfer from Premcor to DCRC of any Authorization requires notification to the State, or DNREC, such notice shall be deemed to have been completed as of the date that DCRC provided notice to DNREC of the Premcor Agreement of Sale.

74. To the extent that any appeal, hearing request or challenge filed by Premcor of any Authorization remains pending as of the Effective Date, the Parties agree to the transfer to DCRC from Premcor of such appeal, and the preservation of any challenges raised by Premcor through such Appeals. This provision is not intended nor shall have the effect of expanding the scope of any such appeal.

## **VII. General Provisions**

75. This Agreement shall be governed by, and interpreted under, the laws of the State of Delaware.

76. The Parties agree to cooperate and make all reasonable efforts to secure issuance in a timely manner of all appropriate Authorizations or Other Necessary Approvals required by DCRC to implement the objectives of this Agreement. Consistent with this

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work with the State and DCRC to accomplish the prompt transfer from Premcor to DCRC of such subaqueous land

commitment, DCRC shall promptly respond to any written notice by DNREC requesting additional information or identifying deficiencies in any permit application submitted under this Agreement. Prior to issuing any final permit, DNREC shall provide DCRC with a draft permit reflecting the terms and conditions that DNREC proposes to include within the permit. DCRC and DNREC shall work cooperatively in an attempt to promptly resolve any disagreements concerning specific terms and conditions for inclusion in any permit.

77. Nothing in this Agreement shall limit or affect the rights of DCRC to contest, appeal or otherwise challenge any permit, and/or any other Authorization or Secretary's Order issued by the Secretary, related to any permit identified by this Agreement. In the event that DCRC contests, appeals or otherwise challenges any permit and/or any other Order or Authorization issued by the Secretary related to any permit contemplated by this Agreement, then the Parties agree to attempt to cooperatively resolve any differences concerning the permit and/or request expedited review of such appeal or challenge before the Delaware Environmental Appeals Board.

78. This Agreement identifies the methods and processes by which DCRC shall ensure the compliance of Refinery Operations with certain applicable environmental, regulatory and statutory standards by satisfying standards or operating practices identified in this Agreement and, where appropriate, Authorizations granted to DCRC. Nothing in this Agreement shall relieve DCRC of its obligation to comply with all applicable federal, state and local laws and regulations.



79. No provision of this Agreement shall have the effect of limiting the applicability of any regulations promulgated after the Effective Date, to the extent otherwise applicable to operations at the Refinery.

80. Except as otherwise addressed in this Agreement, neither DNREC nor DCRC waives or otherwise limits, in any way, its rights, claims, positions or available defenses concerning applicability or interpretation of any specific regulatory or statutory provision potentially relevant to the compliance of DCRC's operations at the Refinery.

81. By execution of this Agreement, DCRC does not waive or limit in any way its rights to contest any action by the State, including DNREC, including without limitation relative to DCRC's rights to defend against, and available claims, positions and defenses in responding to, any compliance action initiated by the State, including DNREC.

82. Upon issuance to DCRC of any Authorization or Other Necessary Approval, including without limitation the Modified Title V Permit, which incorporates or applies any obligation of the Parties under this Agreement, the obligation will no longer be separately enforceable under this Agreement.

83. **Third Parties.** This Agreement does not limit or affect the rights of DCRC or DNREC against any person or entity not party to this Agreement, nor does it create or expand any rights of any person or entity not party to this Agreement concerning or against DCRC or DNREC. In addition, this Agreement shall not be considered to create rights in, or grant any cause of action to, any third party not party to this Agreement.

84. **Notice.** Unless otherwise provided herein, notifications to or communications with DNREC or DCRC shall be sent either by overnight receipt mail service or by certified or registered mail, return receipt requested, or hand delivered. Except as otherwise provided herein, written notification or communication shall be addressed as follows:

**As to DCRC:**

James Fedena  
Delaware City Refining Company, LLC  
Delaware City Refinery  
2000 Wrangle Hill Road  
Delaware City, DE 19706

and

Jeffrey Dill, Esquire  
General Counsel  
PBF Investments LLC  
One Sound Shore Drive, Suite 303  
Greenwich, CT 06830

**As to DNREC:**

David Small, Deputy Secretary  
DNREC  
89 Kings Highway  
Dover, DE 19901

Kathy Bunting-Howarth  
Director of Water Resources  
DNREC  
89 Kings Highway  
Dover, DE 19901

and

Valerie Satterfield  
Deputy Attorney General  
Department of Justice 3rd Floor  
102 W. Water Street  
Dover, DE 19001

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

86. **Binding Agreement.** This Agreement shall be binding upon the Parties. DCRC shall not assign or otherwise transfer this Agreement without the prior written consent of the Secretary of DNREC. The undersigned representative of each Party to this Agreement represents that he or she is authorized by the Party whom he or she represents to enter into the terms of this Agreement and bind that Party to them.

87. **Effective Date.** This Agreement shall be effective upon the later date of execution by the authorized representatives of both Parties (the “Effective Date”).

88. **Closing as Prerequisite to Obligations Under the Agreement.** This Agreement, and the commitments, obligations and understandings reflected herein, are dependent upon the successful completion of Closing between DCRC and Premcor regarding the transfer of assets comprising the Refinery. No obligation undertaken by DCRC or DNREC hereunder shall be binding in the event that the closing does not occur.

89. **Modification.** This Agreement may be modified only by the written consent of DNREC and DCRC.

90. **Severability of Terms.** If any part of this Agreement is for any reason found to be unenforceable, all other portions shall nevertheless remain enforceable.

91. This Agreement constitutes the entire agreement between the Parties.

**FOR THE STATE OF DELAWARE**

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

By:  \_\_\_\_\_

Date: May 31, 2010

Collin O'Mara, Secretary  
Department of Natural Resources  
and Environmental Control

**FOR DELAWARE CITY REFINING COMPANY, L.L.C.**

By: \_\_\_\_\_

Thomas J. Nimbley  
Executive Vice President and  
Chief Operating Officer

Date: \_\_\_\_\_