BEFORE THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY,	
Complainant,	EPC FILE NO. 10-0817SH0197
vs.	
MOTIVA ENTERPRISES LLC,	
Respondent.	

CONSENT ORDER

This Consent Order is entered into between the Environmental Protection Commission of Hillsborough County ("EPC") and Motiva Enterprises LLC ("Respondent") to reach settlement of certain matters at issue between the EPC and Respondent pursuant to Chapter 84-446, as amended, Laws of Florida ("Hillsborough County Environmental Protection Act" or "EPC Act"), Chapter 403, Florida Statutes ("F.S."), and an interagency agreement with the Florida Department of Environmental Protection ("DEP") authorizing the EPC to act on behalf of the State.

The EPC finds and the Respondent admits the following:

1. The EPC is a local regulatory agency having the power and duty to protect Hillsborough County's air, soil, and water resources and to administer and enforce the EPC Act, and the EPC rules promulgated thereunder including but not limited to Chapters 1-1 and 1-3, Rules of the EPC, and also Chapter 403, F.S., and the rules promulgated thereunder, specifically Title 62, Florida Administrative Code ("F.A.C."), in Hillsborough County, Florida. The EPC has been specifically authorized by the DEP to enforce State rules and statutes concerning air facilities, including the subject bulk gasoline terminal ("Facility"). The EPC has jurisdiction over the matters addressed in this Consent Order.

2. Respondent is a person within the meaning of Section 403.031(5), F.S.

3. Respondent is the owner and is responsible for the operation of the Facility, which receives, stores and distributes petroleum products. Respondent's Facility is a Title V source as defined in rule 62-210.200, F.A.C. The Facility is also a major source of air pollution as defined in rule 62-210.200, F.A.C. and is a major source of volatile organic compounds

(VOCs). The Facility is located at 6500 W. Commerce Street, Tampa, in Hillsborough County, Florida. The Facility is operated under Air Permit No 0570197-017-AV which was issued on September 30, 2008 and will expire on June 9, 2011; and additionally the Facility operates under Air Permit Nos. 0570197-018-AC and 0570197-019-AC which were issued on December 30, 2010 and will expire on December 31, 2011. All of the Facility's operations are subject to the prohibitions and conditions of the EPC Act and rules promulgated thereunder, Florida Statutes and the rules promulgated thereunder, and any EPC and/or DEP orders or permits (if applicable).

4. The EPC finds that the following violation(s) occurred as the result of a file review performed by EPC staff on August 26, 2010.

a) Respondent failed to submit Title V Air Operation Permit Revision applications to incorporate modifications authorized by Permit No. 0570197-015-AC and 0570197-016-AC into Title V Operation Permit, in violation of 40 CFR 70.5(a); Rule 62-213.420(1)(a)(3). F.A.C; Sections 1-3.21.(1) and (3), Rules of the EPC; Facility-wide Condition No. 19 of Permit No. 0570197-015-AC and 0570197-016-AC; and Conditions 18. and 32. of Appendix TV-6 of Permit No. 0570197-017-AV.

b) Respondent operated the facility without a permit, in violation of 40 CFR 70.5(a); Rule 62-4.03, F.A.C; Sections 1-3.21(1) and (3), Rules of the EPC; Facility-wide Condition No. 19 of Permit No. 0570197-015-AC and 0570197-016-AC; and Condition 18 and 32 of Appendix TV-6 of Permit No. 0570197-017-AV.

c) Respondent failed to submit the compliance test report for the November 19, 2009, Vapor Recovery Unit (VRU) test to the EPC within 45 days of the test date, in violation of Rule 62-297.310(8)(a)(b), F.A.C; Section 1-3.21(3), Rules of the EPC; and Specific Condition No. A.11 of Permit No. 0570197-017-AC.

d) Respondent failed to report the late submittal of the VRU test report in the Semi-annual Monitoring Report for January-June 2010, in violation of 40 CFR 64.9; F.A.C; Section 1-3.21.(3), Rules of the EPC; Condition No. 43 of Appendix TV-6 of Permit No. 0570197-017-AV; and Condition No. 15 of Appendix CAM of Permit 0570197-017-AV.

e) Respondent failed to report operation without a permit in the July -Dec. 2008, Jan.-June and July-Dec. 2009, Jan.-June 2010 Semi-annual Monitoring Reports and the 2008-2010 Annual Statement of Compliance Reports, in violation of 40 CFR 64.9 (a); Section 1-3.21.(3), Rules of the EPC; Condition No. 43 of Appendix TV-6 of Permit No. 0570197-017-AV; and

Condition No. 15 of Appendix CAM of Permit 0570197-017-AV.

f) Respondent failed to submit a Responsible Official Notification Form (DEP Form No. 62-213.900(8)) designating a new Title V Responsible Official for the Tampa terminal, in violation of Rule 62-213.202(3), F.A.C; and Section 1-3.21(3), Rules of the EPC.

5. On August 13, 2010, Respondent provided to EPC staff the compliance report for the Vapor Recovery Unit test. EPC staff reviewed the report and verified the compliance of the Unit.

6. On August 30, 2010, EPC staff issued Warning Notice No. 2010-0224A to Respondent for the violations described in paragraph four above. Respondent replied to the warning notice by letter dated September 16, 2010, stating that an application for permit renewal was in process and that all reports and notifications would be submitted to EPC.

7. On September 16, 2010, Respondent submitted Responsible Official Notification Form designating a new Title V Responsible Official for the Tampa terminal.

8. Respondent met with EPC staff on October 7, 2010, to discuss the case.

9. By letter dated October 14, 2010, Respondent submitted all outstanding Semi-annual Monitoring and Annual Statement of Compliance Reports as outlined in paragraph four.

10. On October 26, 2010, Respondent submitted two construction permit applications to EPC to replace construction permits 0570197-015-AC and 0570197-016-AC which expired on October 26, 2008 and December 31, 2009, respectively. The new permits were issued final on December 30, 2010 and will expire December 31, 2011.

11. Having reached a resolution of the matter Respondent and the EPC mutually agree and it is

ORDERED:

12. Respondent shall comply with the following corrective actions within the stated time periods:

Within 15 days of the effective date of this Consent Order, the Respondent shall implement and utilize at all times the Terminal's InControl maintenance management system to track due dates and assign responsibilities for the air permitting and compliance requirements identified in Attachment 1 to this Consent Order. Motiva may replace InControl at a future date

for the purpose of air permit and compliance tracking with a new management system. In this event, Motiva shall use the new management system to satisfy the terms of this Consent Order. The Respondent must use a management system that incorporates managerial oversight into the tracking process and at a minimum, two levels of review, from separate Motiva staff. Through the InControl or future replacement management system Respondent shall ensure the input of deadline dates into the system and tracking those dates for permitting and compliance activities are met on a timely basis.

13. Within 15 days of the effective date of this Consent Order, Respondent shall pay the EPC as follows in settlement of the matters addressed in this Consent Order:

(a) $912.46 for costs and expenses incurred by the EPC during the investigation of this matter and the preparation and tracking of this Consent Order, made payable to "**The Environmental Protection Commission**" with the notation "EPC Costs" and the EPC number assigned to this Consent Order found on the first page of this Consent Order.

(b) A civil penalty in the amount of $5,500.00 made payable to the **"EPC Pollution Recovery Fund"** and with the notation "Civil Penalty" and EPC number assigned to this Consent Order found on the first page of this Consent Order.

All payments shall be by check or money order and shall be mailed to the EPC, 3629 Queen Palm Drive, Tampa, Florida 33619 to the attention of Reginald Sanford in the Air Management Division. If Respondent fails to timely pay an agreed penalty or cost in full or any installment payment or if the Respondent files for bankruptcy, Respondent shall notify EPC within ten days of missing a payment deadline or filing for bankruptcy and any unpaid balance will become immediately due and owing.

14. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the

contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the EPC by the next working day and shall, within seven calendar days notify the EPC in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. The agreement to extend any deadline(s) must be in writing from the EPC, but does not necessarily require execution of an amended Consent Order. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

15. Persons who are not parties to this Consent Order, but whose substantial interests are affected by this Consent Order, have a right, pursuant to Sections 120.569 and 120.57, F.S., to petition for an administrative hearing on the Consent Order. The Petition must contain the information set forth below and must be filed (received) at the EPC's Legal Department, 3629 Queen Palm Drive, Tampa, Florida 33619 within 21 days of receipt of this notice of rights. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S.

The petition shall contain the following information:

(a) The name and address of each agency affected and each agency's file or identification number, if known; the name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;

(b) an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision (i.e. – Consent Order);

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the EPC's final action may be different from the position taken by it in this Consent Order. Persons whose substantial interests will be affected by any decision of the EPC with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Legal Department at the above address of the EPC. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, F.A.C. **Mediation is not available.**

16. Respondent shall allow all authorized representatives of the EPC access to the Property and Facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the DEP and EPC. Determining compliance includes but is not limited to, taking video or photographs, inspection, record reviews, sampling, and testing.

17. All submittals and payments required by this Consent Order to be submitted to the EPC shall be sent to Reginald Sanford, Air Management Division, EPC at 3629 Queen Palm Drive, Tampa, Florida 33619.

18. This Consent Order is a settlement of the EPC's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of

any violation which may be prosecuted criminally or civilly under federal law. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances, and all applicable permits and orders issued under those laws, regulations or ordinances. This Consent Order shall not be a defense to any actions commenced pursuant to said laws, regulations, ordinances, orders, or permits, except as expressly described in this Consent Order.

19. The EPC hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the EPC that are not specifically resolved by this Consent Order. The EPC reserves its right to pursue any and all of its legal remedies as to any other persons not party to this settlement.

20. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), F.S., and the EPC Act.

21. The EPC, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Consent Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Consent Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Consent Order. The Respondent acknowledges and agrees that in no event shall this Consent Order shall be construed to apply as a waiver by the EPC to undertake causes of action not addressed by this Consent Order.

22. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to $10,000.00 per day per violation, costs and expenses of litigation, and criminal penalties.

23. No modifications of the terms of this Consent Order shall be effective until reduced to writing, executed by both Respondent and the EPC, and filed with the Clerk of the EPC.

24. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this Consent Order. Respondent also acknowledges and waives its right to appeal the terms of this Consent Order pursuant to Section 120.68, F.S. Respondent hereby foregoes, surrenders, waives, and disclaims any and all

other hearing and appeal rights under Chapter. 120, F.S. or Section 9 of the EPC Act and any and all other suits, appeals, claims, or causes of action in any court of competent jurisdiction, including but not limited to County Court, Circuit Court, the Division of Administrative Hearings, appellate courts, or any other EPC hearing processes against the EPC and DEP arising out of or relating to the violations specifically addressed in this Consent Order, and Respondent, and their counsel, further agree not to encourage or support any such actions by other parties or entities to challenge this Consent Order. If Respondent is charged with violation of this Consent Order, Respondent does not waive its right to prove compliance with the terms of this Consent Order in any court of competent jurisdiction.

25. The provisions of the Consent Order shall apply to, inure, and be binding upon the parties and their successors and assigns. Each of the parties hereby agrees that in the event one of the parties attempts to enforce the terms of this Consent Order, no defense will be raised as to the validity or enforceability of this Consent Order. This Consent Order shall be construed and enforced under Florida Law.

26. All parties agree to pay their own fees and costs, including attorney's fees and costs, related to the violations addressed in this Consent Order and incurred up to the date of execution of this Consent Order, except that Respondent shall pay for any penalties, cost, and fees agreed to in this Consent Order.

27. The EPC, does not, by execution of this Consent Order, warrant or assert in any manner that the Respondent's compliance with this Consent Order will result in compliance with Respondent's permit(s). Notwithstanding the EPC's review or approval of any plans, reports, schedules, policies, or procedures prepared pursuant to this Consent Order, the Respondent and its successors and assigns shall remain solely responsible for any noncompliance with the terms of this Consent Order, all applicable federal, state or local laws, regulations or ordinances.

28. This Consent Order is a final order of the EPC pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the EPC unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition this Consent Order will not be effective until further order of the EPC.

29. Rules referenced in this Consent Order are available at http://www.dep.state.fl.us/legal/Rules/rulelistnum.htm and http://www.epchc.org/rules.htm .

FOR THE RESPONDENT:

July 28, 2011
DATE

Lester F. Millman
NAME Lester F. Millman
Title FLORIDA Complex MGR

STATE OF Florida
COUNTY OF Hillsborough

I, the undersigned (name) Lester Millman (title) Florida Complex Mgr. of Motiva Enterprises LLC (company), and doing business at (address) 6500 Commerce St, Tampa, being first sworn, do affirm that I am duly authorized under the articles of incorporation and by-laws of Motiva Enterprises LLC (company) to bind the Respondent by my signature to this settlement and that it is my signature which first appears above on behalf of Respondent.

Signature Lester Millman

Title Florida Complex Manager

Sworn to and subscribed before me this 28th day of JULY, 2011, by Lester Millman (printed name of Affiant), who is personally known to me, or who produced _____ as identification.

Bonnie Tilton
Notary Public, State of Florida

BONNIE TILTON
Commission # EE 042856
Expires December 21, 2014
Bonded Thru Troy Fain Insurance 800-385-7019

DONE AND ORDERED this 8 day of August, 2011,

in Tampa, Florida.

ENVIRONMENTAL PROTECTION
COMMISSION OF
HILLSBOROUGH COUNTY

Richard Garrity, PhD
Executive Director

FILING AND ACKNOWLEDGEMENT FILED, on this date, pursuant to §120.52 Florida Statutes, with the designated EPC Clerk, receipt of which is hereby acknowledged.

_____ _____

Clerk **Date**

Copies furnished to: Cynthia Falandysz, DEP-SW

Motiva Enterprises, LLC 7/7/11

MOTIVA
ENTERPRISES LLC

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

April 30, 2009

Mr. Jason Waters
Air Management Division
Environmental Protection Commission
Hillsborough County
3629 Queen Palm Drive
Tampa, FL 33619-1309

RE: Motiva Enterprises LLC – Tampa Terminal
Excess Emissions Event :
Permit No.: 0570197-015-AC

Mr. Sanford:

On April 29, 2009, during a weekly inspection of the vapor holding tank vapors were detected at the hatch. Upon discovery of the leak the loading operations were discontinued.

The cause of the leak was due to deterioration and normal wear and tear of the vapor bladder inside of the tank.

Per our telephone conversation on April 30, 2009, Motiva is planning to bypass and permanently discontinue the operation of the vapor holding tank. All gasoline and diesel vapors will be hard piped directly to the VRU and the VCU for processing.

The VRU and VCU will operate on a continuous basis to process gasoline and diesel vapors from truck loading until the installation of the new VRU which is due to be delivered May 16, 2009. We expect to have the unit installed and operational July 1, 2009.

Motiva will also inspect the piping that carries the vapors for leaks in accordance with 40 CFR 60.502(j). on a daily basis until May 14, 2009.

Please let me know if you require additional information regarding this matter.

P.O. Box 2463 Houston, Texas 77252-2463 Phone (713) 241-3504 Fax (713) 241-1110

If you have any questions or require additional information, please contact me by e-mail: nate.grace@motivaent.com or by telephone at (713) 241-3504.

Sincerely,

Nathaniel Grace
Environmental Coordinator

Enclosures:

cc: Ms. Pwu-Sheng Liu, Ph.D, P.E.
Permit Engineer
Environmental Protection Commission
3629 Queen Palm Drive
Tampa, FL 33619-1309

MOTIVA
ENTERPRISES LLC

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

March 4, 2009

Mr. Reginald Sanford
Chief Enforcement and Analysis
Environmental Protection Commission of Hillsborough County
Air Management Division
3629 Queen Palm Drive
Tampa, Fl 33619

RE: Motiva Enterprises LLC – Tampa Terminal
Finalized Consent Order:
Case No.: 08-0611FA0197

Dear Mr. Sanford:

As per your request please find enclosed a signed original consent order, a check in the amounts of $4125.00 made payable to EPC Recovery Fund, and a check in the amount of $433.32 made payable to the EPC.

Also attached for your review is a checklist that will be used by facility staff during the physical inspection of the vapor holding tank. Motiva staff will inspect the vapor holding tank weekly until the new vapor recovery unit is installed and operational.

If you have any questions or require additional information, please contact me by e-mail: nate.grace@motivaent.com or by telephone at (713) 241-3504.

Sincerely,

Nathaniel Grace

Nathaniel Grace
Field Environmental Coordinator

Enclosures

cc: Tampa Terminal

REC'D
MAR 0 5 2009
ENV. PROT. COMM
OF H.C.

P.O. Box 2463 Houston, Texas 77252-2463 Phone (713) 241-3504 Fax (713) 241-1110

BEFORE THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY,	
Complainant,	EPC FILE NO. 08-0611FA0197
vs.	
MOTIVA ENTERPRISES LLC,	
Respondent.	

CONSENT ORDER

This Consent Order is entered into between the Environmental Protection Commission of Hillsborough County ("EPC") and Motiva Enterprises, LLC ("Respondent") to reach settlement of certain matters at issue between the EPC and Respondent pursuant to Chapter 84-446, as amended, Laws of Florida ("Hillsborough County Environmental Protection Act" or "EPC Act"), Chapter 403, Florida Statutes ("F.S."), and an interagency agreement with the Florida Department of Environmental Protection ("DEP") authorizing the EPC to act on behalf of the State.

The Respondent neither admits nor denies the specific factual allegations and the entry of this Consent Order shall not constitute an admission by Respondent of any violation alleged and noted above, nor of any statute or rule.

The EPC finds the following:

1. The EPC is a local regulatory agency having the power and duty to protect Hillsborough County's air, soil, and water resources and to administer and enforce the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, and the EPC rules promulgated thereunder including but not limited to Chapters 1-1 and 1-3, Rules of the EPC, and also Chapter 403, F.S., and the delegated rules promulgated thereunder,

specifically Title 62, Florida Administrative Code (F.A.C.), in Hillsborough County, Florida. The EPC has been specifically delegated State authority from the DEP to enforce State rules and statutes concerning air facilities, including the subject bulk gasoline terminal. The EPC has jurisdiction over the matters addressed in this Consent Order.

2. Respondent is a person within the meaning of Section 403.031(5), Florida Statutes.

3. Respondent is the owner and is responsible for the operation of Motiva Enterprises LLC ("Facility"). Respondent's Facility is a Title V source as defined in section 62-210.200, F.A.C. The Facility is also a major source of air pollution as defined in section 62-210.200, F.A.C. for the air pollutant volatile organic compounds (VOCs). The Facility is located at 6500 W. Commerce Street, Tampa, Florida. All of the Facility's operations are subject to the prohibitions and conditions of the EPC Act and rules promulgated thereunder, Florida Statutes and the rules promulgated thereunder, and any EPC and/or DEP orders or permits.

4. The EPC finds that the Respondent operates the Facility under DEP/EPC Permit Nos. 0570197-013 AV (Permit), which expires on June 9, 2011.

5. On June 11, 2008, EPC staff was notified by the Facility that a leak was discovered in a vapor bladder tank on the same date as reported. EPC staff subsequently inspected the facility on June 12, 2008 and determined that neither the vapor recovery unit (VRU) nor the vapor combustion unit (VCU) operated during the time of the leak. This failure to control the release of excess VOC emissions into the atmosphere constituted circumvention of the pollution control equipment, in violation of Rule 62-210.650, F.A.C., Section 1-3.20, Rules of the EPC, and Specific Condition A.2 of the Permit.

6. It was later determined by EPC staff that the bladder tank leak was detected approximately 12 hours after the VRU automatically shut off, at which time facility staff isolated

the bladder tank from receiving vapors and re-started the VRU and VCU. The 12-hour period to detect and respond to the leak constituted the Facility's failure to use reasonable precautions to prevent the emissions release, in violation of Rule 62-296.320(1)(a) F.A.C., Section 1-3.25(2), Rules of the EPC and Facility-wide Condition No. 6 of the Permit.

7. By letter dated June 25, 2008, in response to Warning Notice 2008-9584A, Respondent stated it disagrees with EPC's findings and denies any violations have occurred.

8. Respondent was issued Air Construction Permit #0570197-016-AC on July 21, 2008, which in part authorizes replacement of the existing VRU. This upgraded VRU will allow the Respondent to adequately control emissions without relying on the bladder tank.

9. On September 25, 2008, Respondent met with EPC staff and discussed settlement of this matter. Respondent committed to submit receipts for the cost of repairs to the bladder tank, and a proposed plan to prevent truck loading without air pollution control equipment. EPC staff received both the proposed plan and the receipts on October 8, 2008.

10. Having reached a resolution of the matter the EPC and the Respondent mutually agree and it is

ORDERED:

11. Respondent shall operate the bladder tank in compliance with all laws until the new VRU is installed and authorized to operate. Until the VRU is operational, Respondent shall ensure compliance by implementing the proposed plan submitted by letter dated October 8, 2008, which is expanded on the details as follows:

a) On or before October 1, 2010, replace the existing VRU with a VRU capable of processing all vapors from the loading rack.

b) Within 15 days of the Execution of this Order, submit a checklist, for Air Management Division staff approval, to be used by facility staff during the physical inspection to

detect leaks at the vapor holding tank. For the purpose of determining whether a leak is present, facility staff shall use sight, sound, and smell techniques in accordance with Condition A.8 (G) of the Title V Permit No. 0570197-013-AV.

c) Maintain an on-site weekly log of the tank inspections. The log must document the proper operation of the vapor processing equipment during loading activities at each shift, and any human or processing equipment malfunctions shall be reported within 24 hours of discovery by Respondent to Air Management Division staff in accordance with the Permit.

d) Respondent may discontinue the monitoring plan after the new VRU is installed and operating properly.

12. Within 30 days of the effective date of this Consent Order, Respondent shall pay the EPC as follows in settlement of the matters addressed in this Consent Order:

(a) $433.32 for costs and expenses incurred by the EPC during the investigation of this matter and the preparation and tracking of this Consent Order, made payable to "**The Environmental Protection Commission**" with the notation "EPC Costs."

(b) A civil penalty in the amount of $4,125, made payable to the **"EPC Pollution Recovery Fund"** and shall include thereon the notation "Civil Penalty" and the EPC number assigned to this Consent Order found on the first page of this Consent Order.

All payments shall be by check or money order and shall be mailed to 3629 Queen Palm Drive, Tampa, Florida 33619 to the attention of Reggie Sanford in the Air Management Division. If Respondent fails to timely pay an agreed penalty or cost in full or any negotiated installment amount or if the Respondent files for bankruptcy, Respondent shall notify EPC within ten days of missing a payment deadline or filing for bankruptcy and any unpaid balance will become immediately due and owing but no later than 20 days of EPC being notified.

13. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the

Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the EPC orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the EPC, notify the EPC in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

14. Persons who are not parties to this Consent Order, but whose substantial interests are affected by this Consent Order, have a right, pursuant to Sections 120.569 and 120.57, F.S., to petition for an administrative hearing on the Consent Order. The Petition must contain the information set forth below and must be filed (received) at the EPC's Legal Department, 3629 Queen Palm Drive, Tampa, Florida 33619 within 21 days of receipt of this notice of rights. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S.

The petition shall contain the following information:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision (i.e. – Consent Order);

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the EPC's final action may be different from the position taken by it in this Consent Order. Persons whose substantial interests will be affected by any decision of the EPC with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Legal Department at the above address of the EPC. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, F.S. **Mediation is not available.**

15. Respondent shall allow all authorized representatives of the EPC access to the Property and Facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the DEP and EPC. Determining compliance includes but is not limited to, taking video or photographs, inspection, record reviews, sampling, and testing. EPC staff will abide by all facility safety and security requirements during any Facility visits.

16. All submittals and payments required by this Consent Order to be submitted to the EPC shall be sent to Reginald Sanford, EPC at 3629 Queen Palm Drive, Tampa, Florida 33619.

17. This Consent Order is a settlement of the EPC's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation, which may be prosecuted criminally or civilly under federal law.

18. The EPC hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order, including but not limited to undisclosed releases, contamination or polluting conditions.

19. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), F.S. and the EPC Act.

20. The EPC, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for the specific violations contained in this Consent Order through the date of the filing of this Consent Order and as addressed herein.

21. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to $10,000.00 per day per violation, and criminal penalties.

22. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances, and all applicable permits and orders issued under those laws, regulations or ordinances. This Consent Order shall not be a defense to any actions commenced pursuant to said laws, regulations, ordinances, orders, or permits, except as expressly described in this Consent Order.

23. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the EPC.

24. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, F.S., and waives that right upon signing this Consent Order. Respondent hereby foregoes, surrenders, waives, and disclaims any and all other hearing and appeal rights under Chp. 120, F.S. or Sec. 9 of the EPC Act and any and all other suits, appeals, claims, or causes of action in any court of competent jurisdiction, including but not limited to County Court, Circuit Court, the Division of Administrative Hearings, appellate courts, or any other EPC hearing processes against the EPC and DEP arising out of or relating to the violations specifically addressed in this Consent Order, and Respondent, and their counsel, further agree not to encourage, cooperate with or support any such actions by other parties or entities to challenge this Consent Order or the validity of the violations specifically addressed herein. If Respondent is charged with violation of this Consent Order, Respondent does not waive its right to prove compliance with the terms of this Consent Order in any court of competent jurisdiction.

25. The provisions of the Consent Order shall apply to, inure, and be binding upon the parties and their successors and assigns. Each of the parties hereby agrees that in the event one of the parties attempts to enforce the terms of this Consent Order, no defense will be raised as to the

validity or enforceability of this Consent Order. This Consent Order shall be construed and enforced under Florida Law.

26. All parties agree to pay their own fees and costs, including attorney's fees and costs, related to the violations addressed in this Consent Order and incurred up to the date of execution of this Consent Order, but for any cost and fees provided for in this Consent Order.

27. The EPC, does not, by execution of this Consent Order, warrant or assert in any manner that the Respondent's compliance with this Consent Order will result in compliance with Respondent's permit(s). Notwithstanding the EPC's review or approval of any plans, reports, schedules, policies, or procedures prepared pursuant to this Consent Order, the Respondent and its successors and assigns shall remain solely responsible for any non-compliance with the terms of this Consent Order, all applicable federal, state or local laws, regulations or ordinances.

28. This Consent Order is a final order of the EPC pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the EPC unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the EPC.

FOR THE RESPONDENT:

Signature: _____

Print: R.P. LEITCH

Title: REGIONAL MANAGER

_____
Date

Corporate Seal

State of Texas

County of Harris

I, the undersigned R.P. LEITCH (name), being duly sworn, do affirm that I am the authorized agent for Respondent, Motiva Enterprises, LLC, that I am authorized

to bind and obligate the Respondent by my signature, and that it is my signature that first appears above on behalf of the Respondent.

Signature _____

Title REGIONAL MANAGER

Sworn to and subscribed before me this 25th day of February, 2009, by R. P. Leitch (printed name of Affiant), who is personally known to me, or who produced _____ as identification.

_____
Notary Public

NOTARY PUBLIC STATE OF FLORIDA
S. SALLEY
My Commission Expires
December 27, 2010

DONE AND ORDERED this 9 day of March, 2009

in Tampa, Florida.

ENVIRONMENTAL PROTECTION
COMMISSION OF
HILLSBOROUGH COUNTY

_____
Richard Garrity, PhD
Executive Director

FILING AND ACKNOWLEDGEMENT FILED, on this date, pursuant to §120.52 Florida Statutes, with the designated EPC Clerk, receipt of which is hereby acknowledged.

_____ March 9, 2009
Clerk **Date**

Copies furnished to: Cynthia Falandysz