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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

In the Matter of **Valero L.P.,** **a limited partnership;** **Valero Energy Corporation,** **a corporation;** **and** **Kaneb Services LLC,** **a limited liability company;** **Kaneb Pipe Line Partners, L.P.,** **a limited partnership.**	**Docket No. C-**

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Valero L.P. of Respondent Kaneb Services LLC and

Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

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The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets ("Hold Separate") and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Valero Energy Corporation is a corporation, organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at One Valero Way, San Antonio, Texas 78249.

2. Respondent Valero L.P. is a publicly-traded limited partnership, organized, existing, and doing business under and by virtue of the laws o

successors, and assigns of each. Valero includes Riverwalk Logistics, L.P., and

1. If the San Francisco Bay Terminals are divested pursuant to Paragraph IV.A. of the Order, the terminals located at Stockton and Selby, California, which at the time of the Merger were owned by Kaneb; but
2. If the Alternative San Francisco Bay Terminals are divested pursuant to Paragraph V.C.3. of this Order, the terminal located at Stockton, California, which at the time of the Merger was owned by Kaneb.

O. "San Francisco Bay Terminals" means Kaneb's Martinez and Richmond, California, refined petroleum product storage and distribution terminals and all assets relating to the two terminals, including but not limited to:
1. all of Kaneb's rights, title, and interest in and to all tangible assets that are located at, or used in connection with Terminaling at, the two terminals, including but not limited to:
    a. real estate, including existing rights or way and easements;
    b. storage tanks;
    c. local connector pipelines;
    d. loading and unloading racks, equipment and facilities;
    e. inventory, equipment, pumps, compressors, machinery, fixtures, tools, and spare parts;
    f. all books, records, and files relating to the two terminals;
    g. offices, buildings, and warehouses; and
    h. all other tangible assets;
2. an exclusive right to all intellectual property used solely in the operation of the terminals, and a non-exclusive license to all other intellectual property necessary for the operation of the terminals;
3. all governmental licenses and permits used in the operation of the terminals;
4. all storage, throughput, and Terminaling contracts, and all other contracts, agreements or understandings relating to the terminals or their operation; and
5. all other intangible assets.

P. "Selby Terminal" means the Kaneb terminal located at 90 San Pablo Avenue, Crockett, California 94525.

Q. "Terminaling" means the services performed by a facility that provides temporary storage of refined petroleum products received via pipeline, marine vessel, tank trucks, rail, or transport trailers, and the re-delivery of refined petroleum products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines.

R. "West Pipeline System" means Kaneb's West Pipeline System of approximately 550 miles of refined petroleum products pipelines, originating near Casper, Wyoming, and terminating in Rapid City, South Dakota, and Colorado Springs, Colorado; four refined petroleum products terminals; and numerous pump stations; and all assets relating to Kaneb's West Pipeline System, including but not limited to:

1. all of Kaneb's rights, title, and interest in and to all tangible assets relating to Kaneb's West Pipeline System, including but not limited to all of Kaneb's rights, title, and interest in and to all tangible assets that are located at, or used in connection with Terminaling at, all terminals owned by Kaneb located anywhere on the West Pipeline System (including the Kaneb terminals in Rapid City, South Dakota; Cheyenne, Wyoming; Dupont, Colorado; and Fountain, Colorado), including but not limited to:
    a. real estate, including existing rights or way and easements;
    b. storage tanks;
    c. local connector pipelines;
    d. loading and unloading racks, equipment and facilities;
    e. inventory, equipment, pumps, compressors, machinery, fixtures, tools, and spare parts;
    f. all books, records, and files relating to the West Pipeline System or the terminals;
    g. offices, buildings, and warehouses; and
    h. all other tangible assets relating to the West Pipeline System;
2. an exclusive right to all intellectual property used solely in the operation of the West Pipeline System and the terminals located on that system, and a non-exclusive license to all other intellectual property necessary for the operation of the West Pipeline System and the terminals located on that system;
3. all governmental licenses and permits used in the operation of the West Pipeline System and the terminals located on that system;
4. all storage, throughput, and Terminaling contracts, and all other contracts, agreements or understandings relating to the West Pipeline System or the terminals located on that system or their operation; and
5. all other intangible assets relating to the West Pipeline System and the terminals located on that system.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall divest the West Pipeline System absolutely and in good faith, at no minimum price, within six (6) months after the date on which the Merger is effectuated.

B. Respondents shall divest the West Pipeline System only to a single Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the Acquirer may reasonably request in the Acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed to be equivalent unless it enables the pipeline or terminal to perform the same function at the same or less cost.

D. The purpose of this Paragraph II. is to ensure the continued use of the West Pipeline System in the same business in which it was engaged at the time of the announcement of the proposed Merger and to remedy the lessening of competition in the pipeline transportation and Terminaling of light petroleum products resulting from the proposed Merger, as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. Respondents shall divest the Philadelphia Area Terminals absolutely and in good faith, at no minimum price, within six (6) months after the date on which the Merger is effectuated.

B. Respondents shall divest the Philadelphia Area Terminals only to a single Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the Acquirer may reasonably request in the Acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed to be equivalent unless it enables the pipeline or terminal to perform the same function at the same or less cost.

D. The purpose of this Paragraph III. is to ensure the continued use of the Philadelphia Area Terminals in the same business in which they were engaged at the time of the announcement of the proposed Merger and to remedy the lessening of competition in the Terminaling of light petroleum products resulting from the proposed Merger, as alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that:

A. Respondents shall divest the San Francisco Bay Terminals absolutely and in good faith, at no minimum price, within six (6) months after the date on which the Merger is effectuated.

B. Respondents shall divest the San Francisco Bay Terminals only to a single Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the Acquirer may reasonably request in the Acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed to be equivalent unless it enables the pipeline or terminal to perform the same function at the same or less cost.

D. The purpose of this Paragraph IV. is to ensure the continued use of the San Francisco Bay Terminals in the same business in which they were engaged at the time of the announcement of the proposed Merger and to remedy the lessening of competition in the Terminaling of refining components, blending components, and light petroleum products resulting from the proposed Merger, as alleged in the Commission's Complaint.

V.

IT IS FURTHER ORDERED that:

A. If Respondents have not divested the West Pipeline System, the Philadelphia Area Terminals, or the San Francisco Bay Terminals, absolutely and in good faith, as required by Paragraphs II., III., or IV., respectively, of this Order, the Commission may appoint a trustee to divest the applicable assets as described in Paragraph V.C. below, in a manner that satisfies the requirements of Paragraphs II., III., or IV., of this Order, whichever is applicable.

B. In the event that the Commission or the U.S. Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action to divest the respective assets in accordance with the terms of this Order. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the U.S. Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

C. If Respondents have not satisfied the requirements of
   1. Paragraphs II.A and II.B. of this Order, the Commission may appoint a trustee to divest the West Pipeline System;
   2. Paragraphs III.A. and III.B. of this Order, the Commission may appoint a trustee to divest the Philadelphia Area Terminals
   3. Paragraphs IV.A. and IV.B. of this Order, the Commission may appoint a trustee to divest the San Francisco Bay Terminals or the Alternative San Francisco Bay Terminals.

D. The Commission shall select the trustee, subject to the consent of Valero, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Valero has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Valero of the identity of any proposed trustee, Valero shall be deemed to have consented to the selection of the proposed trustee.

E. Within ten (10) days after appointment of a trustee, Valero shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the unreaso

5. The trustee shall serve, without bond or other security, at the cost and expense of Valero, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have the authority to employ, at the cost and expense of Valero, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission, of the account of the trustee, including fees for the trustee's services, all remaining monies shall be paid at the direction of Valero, and the trustee's power shall be terminated. The compensation of the trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of assets as required by this Order.

6. Valero shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

7. The trustee shall have no obligation or authority to operate or maintain the assets required to be divested pursuant to this paragraph.

8. The trustee shall act in a fiduciary capacity for the benefit of the Commission.

9. The trustee shall report in writing to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

10. Valero may require the trustee and each of the trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* such agreement shall not restrict the trustee from providing any information to the Commission.

G. If the Commission determines that a trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in this Paragraph V.

H. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

for all products, and (2) preference for shipments of the U.S. Department of Defense.

2. Respondent shall continue the current procedure of permitting a customer to withdraw from the commingled tanks the ethanol inventory of another customer, upon written approval of both affected customers.

D. Respondents shall take steps to ensure that all of their employees comply with the requirements of subparagraphs VI.A., B. and C., above, including establishing and disseminating applicable policies and procedures to all employees no later than 30 (thirty) days after the Order becomes final.

E. Valero shall provide written notification to the staff of the Commission at least 30 (thirty) days prior to leasing to VEC the use, on an exclusive basis, of any of the tanks (or any portion thereof) at the Retained San Francisco Bay Terminals that, as of the date Respondents executed the Consent Agreement, was designated for commingled storage of ethanol; *provided, however*, that such notice is not required for tanks leased to VEC at the Selby Terminal so long as at least four hundred thousand (400,000) shell barrels of tankage remains designated for commingled storage of ethanol at the Selby Terminal.

F. The purpose of this Paragraph VI. is to ensure continued access to the Retained San Francisco Bay Terminals for customers at least at the same level of access that they had at the time of the announcement of the proposed Merger and to remedy the lessening of competition in the Terminaling of bulk ethanol resulting from the proposed Merger, as alleged in the Commission's Complaint.

VII.

IT IS FURTHER ORDERED that:

A. For a period commencing on the date this Order becomes final and continuing for ten (10) years, Respondents shall not, without prior written notification to the Commission, acquire, directly or indirectly, the Philadelphia Area Terminals or any portion thereof.

B. The prior notification required by the Paragraph VII.A. shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the "Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Secretary of the

IX.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to (1) any proposed dissolution of that Respondent, (2) any proposed acquisition, merger or consolidation of that Respondent, or (3) any other change in that Respondent that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in that Respondent.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to any Respondent, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours of that Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of that Respondent related to compliance with this Order; and

B. Upon five (5) days' notice to that Respondent and without restraint or interference from that Respondent, to interview officers, directors, or employees of that Respondent, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that if: (1) within the time period required for divestiture pursuant to Paragraphs II., III., or IV., of this Order, Respondents have submitted a complete application in support of the applicable divestiture (including the acquirer, manner of divestiture, and all other matters subject to Commission approval) as required by such paragraphs; and (2) the Commission has approved the applicable divestiture and has not withdrawn its acceptance; but (3) Respondents have certified to the Commission prior to the expiration of the applicable time period that (a) notwithstanding timely and complete application for approval by complete shall be extended (a) for ninety (90) days or (b) until the disposition of the motion filed by the State of California pertaining to the proposed divestiture, whichever is later. During such period of extension, Respondents shall exercise utmost good faith and best efforts to resolve the concerns of the State of California.

XII.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date this Order becomes final.

By the Commission.

Donald S. Clark
Secretary

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ISSUED: