

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

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

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**In the Matter of**

**Valero L.P.,**  
                  **a limited partnership;**  
**Valero Energy Corporation,**  
                  **a corporation;**

**a limited partnership.**

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**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Valero L.P. of Respondent Kaneb Services LLC and Respondent Kaneb Pipe Line Partners, L.P., and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge 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

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 determine to accept the executed Consent Agreement and to place 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 issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate 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 of the state of Delaware, with its office and principal place of business located at One Valero Way, San Antonio, Texas 78249.

3. Respondent Kaneb Pipe Line Partners, L.P. is a publicly-traded limited partnership, 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 2435 North Central Expressway, Richardson, Texas 75080.

4. Respondent Kaneb Services LLC is a publicly-trad

- A. “Decision and Order” means:
1. until the issuance and service of a final Decision and Order by the Commission, the proposed Decision and Order contained in the Consent Agreement in this matter; and
  2. following the issuance and service of a final Decision and Order by the Commission, the final Decision and Order issued by the Commission.
- B. “Held Separate Business” means:
1. West Pipeline System;
  2. Philadelphia Area Terminals;
  3. San Francisco Bay Terminals;
  4. and all employees located at the above at the time Respondents executed the Consent Agreement and any hired by the Held Separate Business after that time.
- C. “Hold Separate Period” means the time period during which the Hold Separate Order is in effect, which shall begin no later than the later of five (5) days after the date the Hold Separate Order becomes final or one (1) day after the Merger is effectuated, and shall terminate pursuant to Paragraph V. of this Hold Separate Order.
- D. “Martinez Project” means the project identified and described in Confidential Appendix A.
- E. “Material Confidential Information” means information not in the public domain and not independently known to an entity from sources other than the entity to which the information pertains.

## II.

### **IT IS FURTHER ORDERED** that:

- A. During the Hold Separate Period:
1. Respondents shall hold the Held Separate Business separate, apart, and independent as required by this Hold Separate Order and shall vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business; and
  2. Respondents shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations,

or the Hold Separate Trustee, except to the extent that Respondents must exercise direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate Order, the Decision and Order, and the Consent Agreement, and with all applicable laws, including, in consultation with the Hold Separate Trustee, continued oversight of the Held Separate Business' compliance with policies and standards concerning the safety, health, and environmental aspects of their operations and the integrity of their financial controls; and Respondents shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against any Held Separate Business.

- B. From the time Respondents execute the Consent Agreement until divestiture of the assets required to be divested by the Decision and Order, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Held Separate Business and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.
- C. The purposes of this Hold Separate Order are to:
  - 1. preserve the Held Separate Business as a viable, competitive, and ongoing business independent of Respondents until the divestitures required by the Decision and Order are accomplished;
  - 2. assure that the purposes of the Decision and Order are achieved;
  - 3. assure that no Material Confidential Information is exchanged between Respondents and the Held Separate Business, except in accordance with the provisions of this Hold Separate Order;
  - 4. prevent interim harm to competition pending the required divestitures; and
  - 5. help remedy the anticompetitive effects of the proposed Merger.
- D. Respondents shall hold the Held Separate Business separate, apart, and independent on the following terms and conditions:
  - 1. James F. Smith shall serve as Hold Separate Trustee, pursuant to the Hold Separate Trustee Agreement ("HS Trustee Agreement"), which has been executed by the Hold Separate Trustee and Respondents and is attached hereto as Confidential Appendix C .
    - a. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for monitoring the organization of the Held Separate Business; for managing the Held Separate Business through the

Managers; for maintaining the independence of the Held Separate Business; and for monitoring Respondents' compliance w

budgets, projections or any other regularly prepared financial statements.

2. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this Paragraph, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Hold Separate Trustee, Respondents shall be deemed to have

- b. Each Manager shall report directly and exclusively to the Hold Separate Trustee and shall manage the applicable Held Separate Business independently of the management of Respondents. No Manager shall be involved, in any way, in the operations of the other businesses of Respondents during the term of this Hold Separate Order.
- c. Each Manager's compensation for managing the Held Separate Business may include economic incentives dependent on the financial performance of his respective Held Separate Business if there are also sufficient incentives for each Manager to operate his respective Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate Order.
- d. No Manager shall make material changes in the present operation of the Held Separate Business, as applicable, except with the approval of the Hold Separate Trustee, in consultation with the

persons who have similar experience and expertise or determine not to  
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discussions with landowners, records maintenance, calculation and payment of rentals, negotiation and settlement of damage claims and the generation of all real property schedules associated with acquisition or disposition of real property interests;

- (7) Legal;
- (8) Preparation of tax returns;
- (9) Accounting services;
- (10) Audit services;
- (11) Human resources administrative services; and
- (12) Risk management.

b. Respondents shall offer to the Held Separate Business any services and products that Respondents provide to their other businesses directly or through third party contracts, or that they have provided directly or through third party contracts to the businesses constituting the Held Separate Business at any time since January 1, 2004. The Held Separate Business may, at the option of the applicable Manager with the approval of the Hold Separate Trustee, obtain such services and products from Respondents. The services and products that Respondents shall offer the Held Separate Business shall include, but shall not be limited to, the following:

- (1) Procurement;
- (2) IT support services; and
- (3) Public affairs.

c. In connection with services and products other than those listed in

furnishing any such information to or with any other person whose employment involves any of Respondents' businesses other than the Held Separate Business. These persons shall not be involved in any way in the management, production, distribution, sale, marketing, or financial operations of the competing services or products of Respondents.

9. No later than ten (10) days after the date this Hold Separate Order becomes final, Respondents shall establish procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Held Separate Business consistent with the provisions of this Hold Separate Order.
10. No later than ten (10) days after the date this Hold Separate Order becomes final, Respondents shall circulate to employees of the Held Separate Business and to Respondents' employees a notice of this Hold Separate Order, the Decision and Order, and the Consent Agreement, in the form attached as Appendix B.
11. The Hold Separate Trustee and each Manager shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.
12. Respondents shall indemnify the Hold Separate Trustee and each Manager

d. to maintain the viability, competitive vigor, and marketability of the Held Separate Business.

Such financial resources to be provided to the Held Separate Business shall include, but shall not be limited to, general funds, capital, working capital, and reimbursement for any operating losses, capital losses, or other losses.

14. Respondents shall not, during the Hold Separate Period, offer any employees of the Held Separate Business positions with Respondents; *provided, however*, that Respondents may offer positions to an employee of the Held Separate Business (including any Manager) if the applicable Acquirer has determined not to offer a position to that employee.
15. Acquirers shall have the option of offering employment to any employees of the Held Separate Business, and Respondents
  - a. shall not interfere with the employment, by the Acquirer, of employees of the Held Separate Business;
  - b. shall not offer any incentive to employees of the Held Separate Business to decline employment with the Acquirer or to accept other employment with the Respondents;
  - c. shall remove any legal or contractual impediments that may deter employees of the Held Separate Business from accepting employment with the Acquirer including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the Acquirer; and
  - d. shall ensure the payment, or the transfer for the account of the employee, of all current and accrued bonuses while employed by Kaneb, and any performance bonuses, which shall be based solely on the performance of the Held Separate Business, and pensions and other current and accrued benefits to which employees of the Held Separate Business would otherwise have been entitled had they remained in the employment of Kaneb.
16. For a period of six (6) months commencing on the date of divestiture of the assets to be divested to an Acquirer, Respondents shall not employ or make offers of employment to employees of the Held Separate Business who have accepted offers of employment from that Acquirer unless the individual has been terminated by the Acquirer.
17. Respondents shall offer a retention bonus to employees included in the Held Separate Business who continue their employment with the Held Separate Business until termination of the Hold Separate Period (which shall be in addition to any performance bonus that shall be based solely on the performance of the Held Separate Business, or any severance to which the employees would otherwise be entitled by virtue of their employment

by Respondents during the Hold Separate Period if such employee is not hired by the Acquirer).

18. Except for the Managers, employees of the Held Separate Business, and

limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate Order.

### III.

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

### IV.

**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.

### V.

**IT IS FURTHER ORDERED** that this Hold Separate Order shall terminate at the earlier of:

- A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. the day after the last of the divestitures required by the Decision and Order is completed; *provided, however*, that when assets that are included within the Held Separate Business are divested pursuant to the applicable paragraph in the

Decision and Order, those assets shall cease to be held by the Held Separate Business.

By the Commission, Chairman Majoras recused.

Donald S. Clark  
Secretary

SEAL  
ISSUED: June 14, 2005

**CONFIDENTIAL APPENDIX A**

**[Redacted From the Public Record Version But Incorporated By Reference]**

## **APPENDIX B**

### **NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY**

Valero L.P., Valero Energy Corporation, Kaneb Services LLC, and Kaneb Pipe Line Partners, L.P., hereinafter referred to as Respondents, have entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission relating to the divestiture of certain assets and other relief.

As used herein, the term “Held Separate Business” means the businesses and personnel as defined in Paragraph I.B. of the Order to Hold Separate and Maintain Assets and further defined in the Decision and Order contained in the Consent Agreement. The Held Separate Business includes Kaneb’s refined petroleum product storage and distribution terminals in Paulsboro, NJ; Philadelphia, PA; and Martinez and Richmond, CA; Kaneb’s refined petroleum products pipelines and refined petroleum products terminals comprising its West Pipeline System; and other assets and personnel relating to these assets. Under the terms of the Decision and Order contained in the Consent Agreement, Respondents must divest these assets, which are included within the Held Separate Business, within six months of the date the Respondents complete the proposed Merger.

During the Hold Separate Period (which begins after the Order to Hold Separate and Maintain Assets becomes final and ends after Respondents have completed the required divestitures), the Held Separate Business shall be held separate, apart, and independent of Respondents’ businesses. The Held Separate Business must be managed and maintained as a separate, ongoing business, independent of all other businesses of Respondents until Respondents have completed the required divestiture. All competitive information relating to the Held Separate Business must be retained and maintained by the persons involved in the operation of the Held Separate Business on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other of Respondents’ businesses. These persons involved in the operation of the Held Separate Business shall not be involved in any way in the management, production, distribution, sales, marketing, or financial operations of Respondents relating to competing products. Similarly, persons involved in similar activities in Respondents’ businesses shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Held Separate Business.

Any violation of the Consent Agreement may subject Respondents to civil penalties and other relief as provided by law.



**CONFIDENTIAL APPENDIX C**

**TRUSTEE AGREEMENT**

**[Redacted From the Public Record Version But Incorporated By Reference]**