

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violations of Article 17 Title 10 of the Environmental Conservation Law of the State of New York and Title 6, Parts 612-614 of the Official Compilation of Codes, Rules and Regulations of the State of New York by:

Motiva Enterprises LLC,  
Respondent.

**ORDER ON CONSENT**

Case Number:  
D2-1003-01-08AM

**JURISDICTION**

1. The New York State Department of Environmental Conservation (the "Department") is a department of the State of New York which, pursuant to Titles 3 and 10 of Article 17 of the Environmental Conservation Law (ECL), is authorized to regulate the storage and handling of petroleum in the State of New York.
2. 6 NYCRR 612 provides for the regulation of petroleum storage facilities in order to protect the public health, welfare and the lands and waters of the State.
3. Article 12 of the Navigation Law authorizes the Department to effect prompt cleanup and removal of petroleum discharges.

**PARTIES**

4. Motiva Enterprises LLC (the "Respondent"), is a foreign limited liability company authorized to do business in the State of New York.

**FACILITIES**

5. Respondent owns and/or operates the petroleum bulk storage facilities located in New York State, listed in Exhibit "A", attached hereto and made a part hereof (collectively, the "PBS Facilities").

6. The petroleum storage capacity at each of the above listed PBS Facilities exceeds 1,100 gallons. Each one of the PBS Facilities listed in Exhibit "A" is subject to this Order.

### **FACTS**

7. The Department alleges that inspections performed by Department staff at one or more of the PBS Facilities revealed violations of the regulations promulgated pursuant thereto, including 6 NYCRR Parts 612-614.
8. Respondent admits that PBS violations have been found at some of the PBS Facilities, as set forth in previous Notices of Violation that have been submitted to Respondent and acknowledges that it may have violations at PBS Facilities that require curing.

### **PENALTY PROVISION OF LAW**

9. ECL §71-1929 provides for a penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation of Titles 1 through 11 inclusive of Article 17, or the rules and/or regulations promulgated thereto by the Commissioner of the Department.

### **OBJECTIVES OF ORDER**

10. The objectives of this Order include requiring:
  - A. Respondent's compliance with regulations concerning the bulk storage of petroleum, including federal, state and delegated counties' requirements ("PBS Requirements");
  - B. Respondent's payment of a civil penalty and completion of environmental benefit project(s) for past violations of regulations concerning the bulk storage of petroleum; and
  - C. An independent Environmental Audit of Respondent's PBS Facilities to provide Respondent with appropriate recommendations to achieve and maintain compliance with PBS Requirements.

**II. PBS FACILITY AUDIT**

- A. Respondent shall retain an Independent Auditor to conduct a PBS Facility Audit to determine compliance with the PBS Requirements.
- B. When performing the PBS Facility Audit, the Independent Auditor shall utilize the current PBS Checklists and any related Department guidance relating to PBS Facilities.
- C. The PBS Facility Audit shall be conducted in accordance with a work schedule, approved by the Department, but under no circumstances shall the PBS Facility Audit work schedule constitute a time period longer than nine (9) months from the effective date of this Order.
- D. During the performance of the Audit, the Independent Auditor will notify Respondent of any findings of non-compliance. To the extent practicable, in consultation with the Independent Auditor, Respondent may elect to remedy non-compliance items noted in the Inspection Checklist concurrently with the audit visit.
- E. The Audit shall include a review by the Independent Auditor of open spill numbers in the Department's records for each of the PBS Facilities. Upon request by the Independent Auditor, the Department shall provide a list of such open spill numbers for each PBS Facility. The Independent Auditor shall review such spill numbers and as part of the Corrective Measures Program for each PBS Facility, Respondent shall either close out such spill numbers within 60 days of the Audit or shall propose a plan for closing out the spill numbers in accordance with the Department's regulations, policies and procedures. To the extent that any such

open spill number is associated with a petroleum discharge, the provisions of Section VI of this Order shall apply.

F. By the 15<sup>th</sup> day of the following month, Respondent shall submit to the Department the PBS Facility Audit Reports prepared by the Independent Auditor for audits completed within the preceding month, together with an Environmental Audit Report that contains the additional information described in these subparagraphs:

1. To the extent necessary, and to the extent that curative measures were not implemented prior to submission of the Environmental Audit Report, proposed curative measures for achieving compliance, including a compliance plan, with a time schedule, delineating curative measures (“PBS Facility Curative Measures Program”).
2. Follow-up compliance reports for any repairs/curative measures made to remedy prior audit findings at any PBS facilities previously audited pursuant to this Order, and a description of any curative measures taken at the time of any audit site visit.
3. If Respondent does not agree with a finding in a PBS Facility Audit report, Respondent shall state its objection(s) in writing in the Environmental Audit Report. The Department shall follow-up with Respondent as appropriate to resolve any disputed matter.

G. PBS Facility Curative Measures Program Requirements

1. Respondent shall promptly initiate curative measures for non-compliance identified in the PBS Facility Audits, and shall work diligently to complete such curative measures within the dates specified in the compliance schedule set forth in the PBS Facility Curative Measures Program.
2. No Department approval is required for any curative measures completed within sixty (60) days of the audit. Respondent shall notify the Department of any curative measures that it anticipates will require more than sixty (60) days to implement in a separate notification submitted no later than the due date of the Environmental Audit Report. Any curative measure requiring more than sixty (60) days to cure must be approved by the Department. The Department shall make all reasonable efforts to approve or disapprove such proposals within 15 days of the Department's receipt of a proposal, and such approvals shall not be unreasonably withheld.
3. In the event that the Department disapproves a proposal for a curative measure requiring more than 60 days to implement, it shall provide specific written grounds for the disapproval. Within 7 business days after Respondent receives written notice of disapproval, Respondent shall submit a revision responsive to the Department's objections. Within 15 days of the Department's receipt of Respondent's revision, the Department shall notify

Respondent in writing of its approval or disapproval. If the revised submission is approved, Respondent shall implement it in accordance with its schedule and terms. If the Department cannot approve the revised submission as submitted, it may disapprove it or may approve it on condition that Respondent accepts such modifications as may be specified by the Department. If the Department disapproves the revised submission on grounds that are reasonable and consistent with customary engineering standards, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to paragraph III of this Order and its position prevails. Failure to make a timely election or failure to comply with the election is a violation of this Order.

4. In the event that Respondent should elect to remove a PBS tank system or to sell a PBS Facility to a third party after curative measures have been approved for such facility, Respondent shall have an obligation to complete any curative measures approved in the PBS Facility Curative Measures Program that require repairs or modification of physical equipment at such PBS Facility, but Respondent shall not be obligated to implement any curative measures that address compliance with recordkeeping, reporting, or operation of the PBS Facility beyond the date of the sale of the PBS Facility. Respondent shall, not less than thirty (30) days

prior to consummation of such conveyance, notify Department in writing of the identity of the proposed transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent shall notify the transferee in writing, with a copy to the Department, of the existence of this Order and of any curative measures that remain to be completed for that facility.

5. Completion of all curative measures must be verified by the Independent Auditor.
  6. Within fifteen (15) days of the Department's receipt of an Environmental Audit Report, the Department shall make a good faith effort to review the Environmental Audit Report to verify completion of audit and curative measures. Upon final review, the Department shall notify Respondent in writing of its findings, and any PBS Facility where the audit and curative measures have been completed for such PBS Facility to the Department's satisfaction shall be released from the requirements of this Order.
- H. Respondent shall prepare a compliance file box for each facility addressed pursuant to this Order. The compliance file box shall contain documents as prescribed by the Department. The compliance file box shall remain at the facility.
- I. The Department shall not seek any civil or administrative penalties for any instance of noncompliance identified in the course of the PBS Facility Audits and

that Respondent has addressed or will address in accordance with the Audit. Except as is required by statute, regulation or written agreement, the Department shall not refer any such matters to another local, State or Federal Environmental Agency or provide the PBS Facility Audit Report or the Environmental Audit Report to another local, State or Federal Agency. If the Department is required to report any information disclosed in the PBS Facility Audit Report or the Environmental Audit Report to other agencies pursuant to statute, regulations or written agreement, then nothing set forth herein will preclude the Department from reporting the information as required, provided however, in the event that the Department is obligated to report any violations to any other local, State or Federal Agency, the Department shall include in any such report, notice of any and all good faith actions taken by Respondent to address the violation, and a statement whether the Department approved of the actions taken by Respondent to address the violation. Consistent with applicable law, the Department will copy Respondent on any such reports. It is expressly understood by the parties that this sub-paragraph applies only to violations reported by Respondent in the Audit and addressed in accordance with the approved Audit. This paragraph does not address any instances of non-compliance that:

1. are both discovered by the Department (either pursuant to its own means or reported by a third party) during the Audit Period, and are not reported in the Audit; or
2. occur after Respondent has audited an individual facility, even if within the Audit Period; or



3. are reserved by the Department pursuant to Reservation of Rights set forth in paragraph VIII., below; or
  4. arise after the effective date of this Order and involve intentional failures to report as required by law, regulation, permit or Order; or
  5. arise after the effective date of this Order resulting from the release of a substantial quantity of petroleum, chemical product, or hazardous waste or substance to the environment.
- J. Nothing contained herein shall preclude the Department from conducting inspections of any of Respondent's PBS facilities during the term of this Order.
- K. To the extent authorized by Article 6 of the Public Officers Law, the PBS Facility Audit Report and the PBS Facility Curative Measures Program and Completion Report shall not be subject to disclosure to third parties, and further, Respondent does not waive any rights arising thereunder or privileges arising under statutory or common law.

### **III. DISPUTE RESOLUTION**

- A. If Respondent disagrees with a determination by the Department under this Order, Respondent may, within thirty (30) days of its receipt of such notice, make a written request for informal negotiations with the Department in an effort to resolve the dispute. A copy of such request shall be sent by Respondent to the appropriate Bureau Chief in the Department's Central Office. The Department

and Respondent shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph III B. The period for informal negotiations shall not exceed thirty (30) days from the date of the Department's initial response to the Respondent's request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Respondent notifies the Department in writing within thirty (30) days after the conclusion of the thirty (30) day period for informal negotiations that it invokes the dispute resolution provisions provided under Subparagraph III B.

- B. Respondent shall file with the OH&M a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which Respondent relies (hereinafter called the "Statement of Position"). A copy of such request and written statement shall be provided contemporaneously to the Department's Director of Environmental Remediation (the "Director") and any other contact people listed in Paragraph VII.E. of this Order.
- C. The Department shall serve its Statement of Position no later than twenty (20) days after receipt of Respondent's Statement of Position.
- D. Respondent shall have the burden of proving by substantial evidence that the Department's position is not reasonable and consistent with customary engineering standards and should not prevail. The OH&M can conduct meetings,

in person or via video or telephone conferences, and request additional information from either party if such activities will facilitate a resolution of the issues.

- E. The OH&M shall prepare and submit a report and recommendation to the Director. The Director shall issue a final decision in a timely manner. The final decision shall constitute a final agency action and Respondent shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Respondent notifies the Department within thirty (30) days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within sixty (60) days after receipt of a copy of the Director's final decision. Respondent shall be in violation of this Order if it fails to comply with the final decision resolving this dispute within forty-five (45) days after the date of such final decision, or such other time period as may be provided in the final decision, unless it seeks judicial review of such decision within the sixty (60) day period. In the event that Respondent seeks judicial review, Respondent shall be in violation of this Order if it fails to comply with the final Court Order or any settlement within thirty (30) days after the effective date of such Order or settlement, unless otherwise directed by the Court. For purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.
- F. The invocation of dispute resolution shall not extend, postpone, or modify Respondent's obligations under this Order with respect to any item not in dispute unless or until the Department agrees or a Court orders otherwise. Except as

otherwise provided in this Order, the invocation of the procedures set forth in this Paragraph III shall constitute an election of remedies and such election shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Respondent regarding the issue in dispute.

- G. The Department shall keep an administrative record of any proceedings under this Paragraph III that shall be available consistent with Article 6 of the Public Officers Law.
- H. Nothing in this Paragraph III shall be construed as an agreement by the parties to resolve disputes through administrative proceedings pursuant to the State Administrative Procedure Act, the ECL, or 6 NYCRR Part 622.

#### **IV. PENALTY PROVISIONS**

- A. Respondent shall pay a total penalty of three hundred fifty thousand Dollars (\$350,000.00). This amount shall be for violations of petroleum storage and spills laws, and shall be paid as follows:
  - 1. \$281,000 shall be paid to the order of the “NYSDEC”, 625 Broadway, Albany, New York 12233-5500, Attention: Alan T. Michaels, Esq., upon thirty (30) days after the effective date of this Order;
  - 2. \$17,000 shall be paid to Nassau County upon completion of the audit requirements of this Order for violations addressed within Nassau County under this Order and for the county’s cooperation in completing the requirements of the Order;

3. \$23,000 shall be paid to Suffolk County upon completion of the audit requirements of this Order for violations addressed within Suffolk County under this Order and for the county's cooperation in completing the requirements of the Order;
  4. \$2,000 shall be paid to Rockland County upon completion of the audit requirements of this Order for violations addressed within Rockland County under this Order and for the county's cooperation in completing the requirements of the Order;
  5. \$27,000 shall be paid to Westchester County upon completion of the audit requirements of this Order for violations addressed within Westchester County under this Order and for the county's cooperation in completing the requirements of the Order.
- B. Except with regard to criminal violations of law or regulations and any other express reservations within this Order, the payment of the amounts set forth in this Order and compliance with the other material terms herein shall fully and completely satisfy, settle and resolve any and all claims the Department may have relating to the facts and circumstances set forth above, including but not limited to the violations identified in previous Notices of Violation that have been submitted to Respondent and identified in the course of the PBS Facility Audits performed pursuant to Paragraph II. of this Order.

**V. TANK REPLACEMENT AND TANK CLOSURE**

- A. For each tank and piping system that the Respondent chooses to remove and/or replace, the Respondent shall use the best professional engineering practices to

minimize ground or surface water contamination during removal and replacement. Tank removals shall be performed in compliance with 6 NYCRR 612 and 613, and other Department guidance documents pertaining to the tanks closure. Replacement tank systems shall comply with 6 NYCRR Part 614.

- B. When the Respondent permanently closes an underground tank system that is not overdue for a tightness testing and does not have an active spill case, the Respondent must submit a closure report (the "Tank Closure Report") only. The report must include (but not be limited to) a detailed description of the removal/in-place closure, scaled site plan and copy of affidavit from a tank contractor. If the Respondent finds evidence of a petroleum release during tank or piping system closure, a report shall immediately (within two hours) be made into the DEC Spills Hotline (800-457-7362) and addressed in accordance with the following paragraph.
- C. When the Respondent closes an underground tank or piping system that is overdue for tightness test or facility has an active spill case, the Respondent shall perform site investigation and, if necessary, remediation in accordance with Section VI of this Order.

## **VI. REMEDIATION**

- A. Respondent shall investigate and remediate any petroleum discharge discovered during a PBS Facility Audit conducted pursuant to Paragraph II. above, in accordance with the Department's regulations, policies, and procedures, as well as the procedures set forth below. Any petroleum discharge that was previously discovered at a PBS Facility and is covered under an existing separate stipulation

or consent order between Respondent and the Department prior to the Effective Date of this Order shall not be subject to this Order.

1. Respondent shall submit all remedial or investigative plans that address a petroleum discharge discovered during a PBS Facility Audit, as well as all data gathered and drawings and submittals/reports made pursuant to such remedial or investigative plan, in an electronic format acceptable to the Department for approval. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.
  2. Respondent shall only implement said plan upon receipt of approval of the plan from the Department. The plan may be modified in writing as may be agreed between Respondent and the Department.
- B. If any petroleum discharge, which is not excluded from the Order as contemplated in section VI.A. above, is discovered during a PBS Facility Audit or was reported to the Department prior to the conduct of a PBS Facility Audit at a PBS Facility, and investigation, monitoring or remediation is expected to last longer than six (6) months from the date of discovery of the discharge, Respondent shall notify the Department and Respondent and the Department shall enter into a separate stipulation or consent order to complete the investigation, monitoring or remediation for that PBS Facility. The separate stipulation or consent order may address all discharges at a particular PBS Facility whether

discovered during the PBS Facility Audit or previously reported. Upon signature of that separate agreement by Respondent and the Department, such discharge or discharges covered by that separate stipulation or consent order shall no longer be subject to this Order. The Department shall assign oversight for such investigation, monitoring or remediation to the Department Case Manager that is normally assigned to Respondent's projects.

- C. If a new petroleum discharge is discovered during a PBS Facility Audit at a PBS Facility at which there is a petroleum discharge already covered by a separate stipulation or consent order between Respondent and the Department prior to the Effective Date of this Order, and investigation, monitoring or remediation of the new discharge is expected to last longer than six (6) months, the new petroleum discharge shall be incorporated into the existing stipulation or consent order and shall not be subject to this Order.
- D. No additional civil penalty payment shall be included in any separate stipulation or consent order entered into for any discharge covered by section VI.B. of this Order, except as expressly reserved under paragraphs VII and VIII of this Order.
- E. Submissions.
  - 1. The Department shall make a good faith effort to review and respond in writing to each of the submittals Respondent makes pursuant to this Order within sixty (60) days. The Department's response shall include an approval or disapproval of the submittal, in whole or in part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.



2. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within forty-five (45) days after the date of Respondent's receipt of the Department's written notice that Respondent's submittal has been disapproved, Respondent may submit a revised submittal addressing the Department's comments. To the extent Respondent deems it necessary to have additional time to modify its submittal, Respondent may request such additional time with a justification for it. The Department's approval of such additional time shall not unreasonably be withheld.
3. After the Department's receipt of Respondent's revisions, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submission, Respondent shall implement it in accordance with the schedule and terms, as approved.
4. If the Department determines that Respondent has failed to appropriately address the Department's comments, Respondent shall be in violation of this Order, and the Department shall proceed to enforce the violation as it deems appropriate. Respondent reserves any rights it may have to file an Article 78 action to challenge any final decision of the Department.
5. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards for remediation at retail service stations.

**VII. ENVIRONMENTAL BENEFIT PROJECT**

- A. In addition to the civil penalty cited in Article IV above, Respondent shall be required to place funds in the amount of two hundred thousand dollars (\$200,000.00) into an escrow account to be used to fund a future Environmental Benefit Project (“EBP”). Within one hundred eighty (180) days of the effective date of this Order, Respondent shall propose to the Department an EBP for which the funds, together with any accrued interest, shall be spent from the escrow account. The proposed EBP shall be intended to secure significant environmental improvements in accordance with the Department’s Commissioner Environmental Benefits Projects Policy, CP-37.

**VIII. RESERVATION OF RIGHTS**

- A. Nothing herein shall relieve Respondent from any obligation it may have under applicable law to report, investigate, and remediate any release of petroleum at any facility in accordance with the Department’s regulations, policies and procedures.
- B. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department’s rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, to recover any penalties under applicable law, and/or to exercise any summary abatement powers with respect to any person, including the Respondent.

- C. If the Respondent fails to comply with any of the requirements of this Order, the Department reserves its right to perform the work required hereunder and reserves all legal remedies against the Respondent and any other person they may have with respect to such performance.
- D. Nothing in this Order waives any liability for criminal prosecution against Respondent, nor does this Order constitute any finding of criminal liability against the Respondent, provided however, that the execution of this Order and Respondents compliance of the terms, provisions and conditions herein shall not be used as evidence in any action or proceeding.

**IX. SPILL COMPENSATION FUND**

Notwithstanding any other provision of this Order, if with respect to any of the PBS Facilities there currently exists or may exist in the future a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against Respondent or any of its successors or assigns, nothing in this Order shall be construed, or deemed, to preclude the State of New York from recovering such claims plus applicable fines and/or penalties from Respondent or any of its successors or assigns. Respondent reserves its rights to recover costs incurred under this Order from any appropriate third party, other than the State of New York or the New York State Environmental Protection and Spill Compensation Fund.

**X. GENERAL PROVISIONS**

- A. Notwithstanding any other provision in this Order, nothing in this Order shall be construed, or deemed to preclude the State of New York from recovering any past and future claim for cost recovery for the New York State Environmental Protection and Spill Compensation act or arising under the New York State Navigation Law which it may have against Respondent.
- B. Solely with respect to the matter addressed under the terms of this Order, Respondent affirmatively waives its right to a hearing in the manner provided by law, consents to the issuance and entry of this Order and agrees to be bound by the terms, provisions and conditions contained herein.
- C. Except for any pending and previously asserted, or future New York State Environmental Protection and Spill Compensation Fund claims, if any, compliance with all material terms of this Order shall satisfy Respondent's outstanding liability for the alleged violations described above, and/or identified by the PBS Facility Audit required hereunder. Respondent's failure to so comply with this Order may subject Respondent to additional penalties for violations of the ECL. Nothing in this Order shall be deemed a waiver of Respondent's right to seek contribution or indemnification from other parties, nor shall this Order be construed as limiting Respondent's right to pursue legal action against any other party.
- D. Respondent shall permit any duly designated officer or employee of the Department to enter areas under control of Respondent and any areas necessary to gain access thereto, for purposes of reasonable inspection and making or causing to be made such samples and tests as the Department deems necessary to assure

compliance with the terms of this Order. To the extent practicable, the Department agrees to abide by all operating requirements and all safety rules or requirements normally required of Respondent's employees and/or visitors and prescribed by Respondent while at any PBS Facility and the Facility.

- E. All reports, documents, notices or other information that Respondent must submit in satisfaction of any requirement of this Consent Order, or any other communication, shall be sent in a format acceptable to the Department to the appropriate Regional Office designees for the PBS audit requirements, with a copy of all reports and correspondence to:

Alan T. Michaels, Esq.  
New York State Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-5500.

Any changes in address shall be provided to the Department in writing.

All notices and communication to Respondent shall be sent to:

Karen Benetti  
Senior HSSE Advisor  
Motiva Enterprises LLC  
98 Pleasant Street  
Somerset, MA 02726

With copies to:

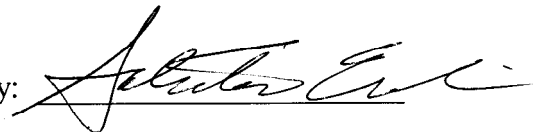
Roberta Lewis  
Senior Legal Counsel  
Shell Oil Company  
OSP 4864  
910 Louisiana St.  
Houston, TX 77252-2463

**XI. TERMINATION**

This Order shall terminate and be deemed satisfied when Respondent demonstrates in writing that all activities required thereunder have been performed. Upon receipt of a request for termination and satisfaction, the Department shall in good faith attempt to either accept or reject the request within thirty (30) days of receipt by issuing a written notice to that effect. If the Department accepts Respondent's request, then this Order or the appropriate paragraph shall be deemed satisfied and terminated. If the Department rejects Respondent's request, the Department shall include in its written notice of rejection a detailed explanation of its objection and the activities or deliverables that are incomplete. This procedure is subject to the dispute resolution in accordance with Section III of this Order.

Dated: Albany, New York  
10/15, 2008

Alexander B. Grannis,  
Commissioner  
New York State Department of  
Environmental Conservation

By: 

CONSENT BY RESPONDENT

Motiva Enterprises LLC hereby consents to the issuance and entry of the foregoing Order without further notice, waives its right to a hearing herein and agrees to be bound by the terms and conditions and provisions hereof.

By: Nora T. Brooks  
Title: General Counsel and Corporate Secretary  
Date: 9/30/08

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF TEXAS            )  
  ) ss.:  
COUNTY OF HARRIS        )

On this 2nd day of October 2008, before me personally came Nora T. Brooks, to me known, who being by me duly sworn, did depose and say that she resides in Texas, that ~~he~~/she is General Counsel & Corporate Secretary, and that ~~he~~/she signed ~~his~~/her name as authorized.

Sworn to before me this  
2nd day of October 2008

Veronica Fowler  
Notary Public



## **STANDARD PROVISIONS**

**Payment.** Any penalty assessed pursuant to the terms and conditions of this Order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation, to: Department of Environmental Conservation, Office of General Counsel, Attn: Alan T. Michaels, Esq., 625 Broadway, Albany, New York 12233-5550. Unpaid penalties imposed by this Order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

**Communications.** Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to: NYS Department of Environmental Conservation, Office of General Counsel, Attn.: Maria Mastroianni, 625 Broadway, Albany, NY 12233-5550.

**Duration.** This Order shall take effect when it is signed by the Commissioner of Environmental Conservation, or his designee, and shall expire when Respondent has fully complied with the requirements of this Order.

**Access.** For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, except for documents reasonably subject to a claim of privilege, or to perform any other lawful duty or responsibility.

**Force Majeure.** If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, government requirement, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

**Indemnity.** Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

**Modifications.** No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, *supra*. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

**Other Rights.** Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

**Entire Agreement.** This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

**Binding Effect.** The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

**Service.** If Respondent is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

**Multiple Respondents.** If more than one Respondent is a signatory to this Order, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the Order.



**Exhibit “A”**  
**List of Facilities**

**Exhibit “B”**

**Department of Environmental Conservation Current Inspection Checklist**