



# SEPs

## Supplemental Environmental Projects: The Most Affected Communities Are Not Receiving Satisfactory Benefits



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REFINERY REFORM CAMPAIGN

A National Campaign To Clean Up U.S. Oil Refineries



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Pictures:

Courtesy of Suzie Canales and Cindy Pena of Citizens for Environmental Justice

Report written by: Suzie Canales

*Suzie Canales is the recipient of the Congressional Hispanic Caucus Institute Award for her Outstanding Achievements in Environmental Justice.*

## Introduction

Corpus Christi's "Refinery Row" consists of several refinery and chemical plants that are in close proximity to communities that are predominately low-income and of people of color. The U.S. government acknowledges that this population is disproportionately burdened by pollution exposure. When industry breaks environmental laws it usually results in tremendous amounts of toxic emissions dumped directly onto the communities. Oftentimes, responsible companies elect to undertake Supplemental Environmental Projects (SEPs) in lieu of a portion of the according fines for their actions. Ideally, these projects would amount to some direct benefit to the most affected communities. Unfortunately, though, all too often these supplemental projects do not offer enough direct benefit to communities hit hardest by those toxic emissions for which these companies are accountable.

For example, in 2002 Citgo was cited with numerous violations (TNRCC, August 7, 2002) <sup>1</sup>. Although a complete list of those violations would be too extensive to include here, it's important to examine a few if we are to get a glimpse into the enormous impact on the community. One single entry from the list of violations stated, in part:

### **Citgo's Cited Unauthorized Emissions <sup>2</sup>**

On August 26, 28, and 30 1999	unauthorized emissions (i.e., excessive opacity) from the Carbon Monoxide Boiler stack
On September 10, 1998; September 11, 1998; September 15, 1998; September 16, 1998; September 17, 1998; September 18, 1998; October 18, 1998; October 19, 1998; October 20, 1998; November 13, 1998; November 25, 1998; November 26, 1998; January 26, 1999; January 27, 1999; February 2, 1999; February 3, 1999; and March 21, 1999	unauthorized VOC and Benzene emissions were documented from the BTX wastewater stripper
On March 29, 1998 through April 3, 1998 (for a total of 9.8 hours); May 24, 1998; June 25, 1998; July 1, 1998; and July 12, 1998	unauthorized VOC and benzene emission from the CPI flare pilot light outages.



**Citgo East**

The extent of Volatile Organic Compounds (VOCs)—including benzene, a cancer-causing chemical<sup>3</sup>—that the community was exposed to from these unauthorized emissions was extensive; however, the funds for a Supplemental Environmental Project that resulted from this enforcement action was awarded to a vehicle emission sensor project instead<sup>4</sup>.

A separate enforcement action against Citgo (August 1999) included operating a surface impoundment without a permit and emitting hydrogen fluoride, VOCs, and hydrogen sulfide without a permit. It resulted in an SEP contribution that would benefit a bird nesting site on Shamrock Island<sup>5</sup>. Here again, no direct benefit to the impacted community.

### **Supplemental Environmental Projects**

A Supplemental Environmental Project (SEP) is an environmental project that a violator voluntarily agrees to perform as part of the settlement of an enforcement action. Although the violator is not legally required to perform a SEP, the cash penalty may be lower if the company chooses to perform one<sup>6</sup>.

## EPA's Categories for Acceptable SEPs <sup>7</sup>

- Public Health
- Pollution Prevention
- Pollution Reduction
- Environmental Restoration and Protection
- Emergency Planning and Preparedness
- Assessments and Audits
- Environmental Compliance Promotion
- Other Types of Projects (other acceptable SEPs would be those that have environmental merit but do not fit within the categories listed above)

## SEPs and Environmental Justice

EPA's Supplemental Environmental Projects Policy (May 1, 1998) states in part:

*There is an acknowledged concern, expressed in Executive Order 12898 on environmental justice, that certain segments of the nation's population, i.e., low-income and/or minority populations, are disproportionately burdened by pollutant exposure. Emphasizing SEPs in communities where environmental justice concerns are present helps ensure that persons who spend significant portions of their time in areas, or depend on food and water sources located near, where the violations occur would be protected <sup>8</sup>.*

However, a review of documents available through an open records request and research indicate that time and again, in the Corpus Christi area, SEPs do not directly benefit the community affected by the violations.



**This Industry URS air monitor showed that during a 24-hour average sampling event in the last quarter of 1999, the benzene level exceeded the state's 24-hour guideline at Crossley Elementary School. Benzene is a known carcinogen <sup>9</sup>.**

## SEPs and Air Monitors

Several million dollars have gone towards state air monitors from SEPs. The most significant contribution to state air monitors initiated through the SEPs program stemmed from a criminal environmental penalty against Koch Refinery in which Koch pleaded guilty in a federal court to conspiracy and making false statements to the government regarding benzene (soon after, the company changed their name to Flint Hills Resources) <sup>10</sup>.

Air monitors are undeniably necessary and beneficial to the community. For example, the air-monitoring network detected the high benzene levels along Refinery Row; however, it's important to note some limitations as well.

Dr. Neil Carman, Clean Air Program Director of the Lone Star Chapter of the Sierra Club and former state inspector commented:

*First, monitors still will not likely measure everything that's potentially found in the ambient air such as dioxins (75 kinds), related furans (135 kinds) PCBs (209 kinds), pesticides (hundreds), many toxic heavy metals, etc. Some of these are not released by the Corpus Christi refineries, but dioxins/furans are likely released due to chlorine in the crude oil. However, TCEQ is not monitoring or looking for these highly carcinogenic substances. Secondly, even with decent monitoring, you have the issue of what standards will the state enforce in Corpus Christi? There are no federal ambient air quality standards for any of the above compounds and metals except lead, of course. So the TCEQ sets some feel-good screening levels they call ESLs, but they are only "guidelines" and not standards. It means that TCEQ can do whatever it wants to with the data they collect. TCEQ has rarely over the last 25 years issued violations and taken enforcement action for a plant exceeding the ESLs, assuming the polluters are caught, so the threat of enforcement action is so remote that Hell is more likely to freeze over before TCEQ does anything like this to polluters.*

Dr. Carman added:

*Monitoring is based on the averaging over time of pollutant concentrations! What that means is that TCEQ does not use instantaneous pollutant values to determine violations or unsafe pollution levels for most chemicals...like you would get from a traffic violation by a police officer. The cops and state DPS use radar guns with instantaneous readouts but no air pollution levels are based on instantaneous readout... rather averages! If we averaged all speeding traffic violations over 30-minutes to one-hour or 24-hours, my opinion is that no one would likely get a traffic ticket because the low speed levels would average out the higher speeds to be less than a speeding violation. So, it is really difficult to get a violation of the Effects Screening Levels <sup>11</sup>.*

## Refinery Row Demographic Data, Census 2000 <sup>12</sup>

Due to President Clinton's Executive Order 12898 on Environmental Justice (February 11, 1994), the EPA's SEP Policy clearly acknowledges the fact that low-income people of color are disproportionately overburdened by pollution exposure. A look at census tracts 4, 5, 6, 7 and 11, all located along Corpus Christi's Refinery Row, confirm that a disproportionately higher percentage of people of color are located in these census tracts as compared to the rest of the city. And, each census tract has a higher percentage of people below the poverty level, compared to the rest of the city.

<b>Census Tract 4</b>	<b>Corpus Christi, Texas</b>	<b>Comparison</b>
Hispanics or Latino: 43.7	53	Lower % of Hispanics
Black or African American: 49.6	4.6	Disproportionately higher % of Blacks (Disparte of 11 – 12 times)
White: 32.9	72.4	Lower % of Whites by 39.5%
<b>Total Minority: 93.3</b>	<b>57.6</b>	<b>Disproportionately higher percentage of total minority - 35.7 % disparity</b>

<b>Census Tract 5</b>	<b>Corpus Christi, Texas</b>	<b>Comparison</b>
Hispanics or Latinos: 50.4	53	Lower % of Hispanics
Blacks or African American: 44.8	4.6	Disproportionately higher % of Blacks (disparte of 10 – 11 times)
White: 33.5	72.4	Lower % of Whites
<b>Total Minority: 95.2</b>	<b>57.6</b>	<b>Disproportionately higher percentage of total minority – 37.6 % disparity</b>



Using a CEREX Hound UV instant monitor, environmental justice activists detected high levels of 1,3 butadiene at this trailer park community along refinery row on February 11, 2005.

<b>Census Tract 6</b>	<b>Corpus Christi, Texas</b>	<b>Comparison</b>
Hispanics or Latino: 77.5	53	Disproportionately higher % of Hispanics – disparity of 24.5 %
Blacks or African American: 6.5-	4.6	1.9 % higher Blacks
Whites: 60	72.4	Lower % of Whites
<b>Total Minority: 84</b>	<b>57.6</b>	<b>Disproportionately higher percentage of total minority – 26.4 % disparity</b>

<b>Census Tract 7</b>	<b>Corpus Christi, Texas</b>	<b>Comparison</b>
Hispanics or Latinos: 62.5	53	9.5 % Higher of Hispanics
Blacks or African American: 3.7	4.6	Lower % of Blacks
Whites: 65	72.4	Lower % of Whites
<b>Total Minority: 66.2</b>	<b>57.6</b>	<b>Higher percentage of total minority – 8.6 %</b>

<b>Census Tract 11</b>	<b>Corpus Christi, Texas</b>	<b>Comparison</b>
Hispanics or Latinos: 88	53	Disproportionately Higher percentage of Hispanics or Latinos – disparity 35%
Blacks: 5.4	4.6	.8% higher Blacks
Whites: 56.5	72.4	Lower % of Whites
<b>Total Minority: 93.4</b>	<b>57.6</b>	<b>Disproportionately Higher % of Total Minority – 35.8 Disparity</b>

### Refinery Row Census Tracts – Population Below Poverty Level

<b>Census Tract</b>	<b>Corpus Christi, Texas</b>	<b>Disparity – Percentage of Population below Poverty Level</b>
Census Tract 4 – 65.1% below poverty level	17 % below poverty level	Disparity of 48.1 %
Census Tract 5 – 43.8 % below poverty level	17 % below poverty level	Disparity of 26.8 %
Census Tract 6 – 24.6 % below poverty level	17 % below poverty level	Disparity of 7.6 %
Census Tract 7 – 30% below poverty level	17 % below poverty level	Disparity of 13 %
Census Tract 11 – 58.2 % below poverty level	17 % below poverty level	Disparity of 41.2 %

All of this begs the question: Why aren't the communities that are being impacted by the company's violations directly benefiting from the resulting SEPs?

The problem may be that the violator gets to choose which project to do (if they elect to do a SEP at all).

Recently, an effort was made to bring SEPs to an impacted community. Corpus Christi-based Citizens for Environmental Justice (CFEJ), working in collaboration with some residents of a fence-line community in Hillcrest, submitted four SEP proposals on October 1, 2004, to the

EPA regarding a settlement agreement between Citgo, the Department of Justice and the Environmental Protection Agency. These proposals would have directly benefited the impacted community.

The four proposals:

- 1) A body burden study that would examine pollutants found in humans. (This could qualify as an acceptable SEP under the Public Health category.)
- 2) A respiratory health study that would attempt to find a link between pollution and respiratory problems. (Public Health)
- 3) A community restoration project to restore decades of property depreciation from neighboring refineries. (Environmental Restoration)
- 4) An Environmental Chemical Impact Readiness Program, which could look at current LEPC practices and make improvements that would benefit the community. (Emergency Planning and Preparedness)

But, on October 6, 2004, a consent decree agreement specified that the SEP Citgo would perform would be the replacement of three natural gas-fired compressors with an electrical compressor and also that this had been negotiated prior to the submission of the SEP proposals from the community<sup>13</sup>. Then, during the public comment period, CFEJ submitted a petition signed by over 200 residents, including many who live adjacent to Citgo, asking that the SEP decision by Citgo be overturned, and that one or more of the community SEPs be chosen. The petition also stated: “SEPs routinely are awarded to wildlife or other projects; left out of the equation is the impacted community itself that had to bear the burden to their health from these violations.”<sup>14</sup>,

Unmoved, Citgo responded in a letter to the US Department of Justice (1/18/2005) by saying:

*The SEP in the Consent Decree consists of the replacement of three natural gas-fired compressors with a new electrical centrifugal compressor. The SEP will provide a direct benefit to the people living and working in the Corpus Christi area and to the environment through the reduction of air emissions from Citgo’s Corpus Christi refinery. Citgo’s engineers estimate actual emissions reductions of more than 90 tons per year (“tpy”) of nitrogen oxides and 10 tpy of carbon monoxide....Citgo welcomes and appreciates the public comments submitted by CFEJ, but believes that the compressor project is the preferred alternative for an SEP. Accordingly, Citgo does not support the proposal to amend the Consent Decree by changing the SEP<sup>15</sup>.*

The Motion to Enter Consent Decree that was submitted to the Court stated: “The Governments cannot compel Citgo to perform, against its wishes, any of the SEPs proposed by CFEJ. Citgo has advised the Government that it will not agree to perform any of the SEPs proposed by CFEJ under the Consent Decree.”<sup>16</sup>,

Consequently, the United States filed a motion to the Court on January 21, 2005, asking the Court to approve the Consent Decree; the Court signed off on the Consent Decree on January 26, 2005<sup>17</sup>.

**Citgo's choice for the Supplemental Environmental Project: Replace three existing natural gas-fired, wet compressors with a single electric driven compressor.**

The Consent Decree agreement indicates that Citgo will spend \$5 million on the SEP but notes that, if Citgo does not spend the entire \$5 million on replacing the compressors, it can either pay the remaining funds as a penalty or request approval to use the unexpended funds for other unidentified Supplemental Environmental Projects.

Concerns raised by CFEJ are that: 1) replacing the natural gas compressors with an electric compressor would appear to benefit Citgo financially, in light of high gas prices; and 2) the SEP provisions appear to allow Citgo to determine, without public review or input, to spend some of the SEP money on other unidentified projects.

“Reducing emissions is something we’re working for,” said Cindy Pena, with Citizens for Environmental Justice. “But how do we know they’re truly going to achieve these reductions through this SEP, and can there really be a true reduction when the same company is also undergoing the largest expansion in U.S. history in the past 20 years?”<sup>18</sup>

 <b>Environmental Protection Agency</b> <b>Integrated Compliance Information System</b> <b>Supplemental Environmental Projects</b>							Created Date: 8/24/2002
							Refresh Date: 4/1/05
							Created By: HQ
<b>Fiscal Year 2005</b>							
<b>Region 06</b>							
<b>CAA</b>							
Enforcement Action Identifier	Enforcement Action Name	Date Entered/ Final Order Issued	Settlement Number/ Name	EJ Addressed?	Historic Cost of SEP	Total SEP Value	
06-2001-0269	CITGO PETROLEUM CORPORATION	01/27/2005	2 CITGO PETROLEUM CORPORATION	No		\$5,000,000	
<b>SEP Category</b>		<b>Cost of SEP</b>	<b>EA Type:</b> Civil	<b>Facility:</b> ICIS42919 / LA	<b>Law Section (All):</b> CAA 110		
Pollution Prevention/Equipment-Technology Modification		\$5,000,000			CAA 165		
Enforcement Action Identifier	Enforcement Action Name	Date Entered/ Final Order Issued	Settlement Number/ Name	EJ Addressed?	Historic Cost of SEP	Total SEP Value	
06-2002-3720	CHEVRON PHILLIPS CHEMICAL COMPANY, A DELAWA	12/30/2004	1 Chevron Phillips Consent Decree	No		\$1,150,000	
<b>SEP Category</b>		<b>Cost of SEP</b>	<b>EA Type:</b> Civil	<b>Facility:</b> ICIS6067 / TX	<b>Law Section (All):</b> CAA 111		
Pollution Prevention/Energy Efficiency-Conservation		\$1,150,000			CAA 112R		
Enforcement Action Identifier	Enforcement Action Name	Date Entered/ Final Order Issued	Settlement Number/ Name	EJ Addressed?	Historic Cost of SEP	Total SEP Value	
06-2002-3720	CHEVRON PHILLIPS CHEMICAL COMPANY, A DELAWA	12/30/2004	1 Chevron Phillips Consent Decree	No		\$50,000	
<b>SEP Category</b>		<b>Cost of SEP</b>	<b>EA Type:</b> Civil	<b>Facility:</b> ICIS6067 / TX	<b>Law Section (All):</b> CAA 111		
Emergency Planning and Preparedness		\$50,000			CAA 112R		
<b>Total for Region 06: 2</b>							

*This document, made available through a Freedom of Information Act request, shows that EPA acknowledges that the SEP Citgo chose to perform, replace three existing natural gas-fired, wet compressors with a single electric driven compressor, does not address EJ (Environmental Justice)<sup>19</sup>.*

## A Look at a Few Local Settlements and Resulting SEPs

### **Facility: Valero Refining 5900 Up River Road**

**Violation/Allegation** (from US EPA, October 16, 2003):

- Failure to notify NRC in a timely manner of a release that was over the reportable quantity.

**Total Penalty Sought:** \$1,500; **Total Penalty Assessed:** \$1,500; **Total Cost of SEP:** \$7,500

**Supplemental Environmental Project: LEPC Conference in Houston, TX**<sup>20</sup>

### **Facility: Trifinery Petroleum 6600 Up River Road**

**Violations/Allegations** (from TNRCC, May 31, 2000):

- Failed to submit a timely federal operating permit application...
- Failed to operate emission units at the site under federal permit authorization...
- Failed to obtain authority according to Prevention of Significant Deterioration requirements...
- Failed to comply with the maximum emission rates...
- Failed to maintain consistent daily observations of the flare in a flare operation log...

**Administrative Penalty:** \$20,000; **Cost of SEP:** At least \$8,000

**Supplemental Environmental Project: Trifinery will purchase 250 units of “Learning to be Water Wise” a Technology-based education Conservation Program, and contribute it to fifth grade students at Tuloso-Midway School**<sup>21</sup>

**Facility: Diamond Shamrock Refining and Marketing**, operates an oil dock at navigation Blvd., ¼ mile west of Harbor Bridge

**Violations/Allegations:** (from TNRCC, August 23, 2000)

- Failing to notify the TNRCC of the hazardous waste tanks located at the Facility
- Failure to maintain adequate records of all hazardous waste and industrial solid waste activities at the facility
- Failure to comply with the requirements of 40 Code of Federal Regulations, including secondary containment and leak detection for the underground tanks at the facility and failing to label or mark hazardous waste tanks with the words Hazardous Waste.”

**Administrative Penalty:** \$60,120.00; **Offset:** \$24,048; **Deferred:** \$12,024 (contingent upon Facility’s timely and satisfactory compliance with all terms of the Agreed Order);

**Cost of SEP:** \$24,048

**Supplemental Environmental Project: Construction of a water exchange between Sunset Lake in Portland, Texas to Lake Corpus Christi Bay**<sup>22</sup>

### **Facility: Williams Terminals Holdings, 1802 Poth Lane**

**Violations/Allegations:** (TCEQ, June 18, 2003)

- Failed to maintain records of monthly calculated emissions from storage tanks
- Failed to maintain records required by Special Condition Number 4 at the site
- Failed to submit semiannual fugitive monitoring reports for sources in dripolene (benzene) service
- Failed to maintain records of emissions estimates of Hazardous Air Pollutants and records of their actual throughputs by commodity

(continued from Page 11)

**Administrative Penalty:** \$19,425; Offset: \$9,712.50 upon completion of SEP

**Cost of SEP:** \$9,712.50

**Supplemental Environmental Project: Contribution to the Nature Conservancy's South Texas Plains, Mustang Island Freshwater Restoration Project** <sup>23</sup>

**Facility: Ticona Polymers, Inc U.S. Highway 77 South**

**Violations/Allegations:** by Texas Commission on Environmental Quality, January 30, 2002

- Burning hazardous waste at the Plant without having a properly functioning system that automatically cuts off the hazardous waste feed
- Failing to record continuous emissions monitoring systems data for CO
- Failing to limit the rolling hourly average for CO emissions
- Failing to maintain records of all corrective measures

**Administrative penalty:** \$191,800.00; Ticona paid \$95,915.00 to be offset upon completion of a SEP.

**Cost of SEP:** \$95,885.00

**Supplemental Environmental Project: A check for the purchase and donation of equipment to the Corpus Christi Fire Department** <sup>24</sup>

**Citgo Refining and Chemicals Company, 1802 Nueces Bay Blvd.**

**Violations/Allegations: (US EPA, 6/03/04)**

- Failure to notify NRC in a timely manner, for a release above reportable quantity
- Total Federal Penalty Sought: \$3,000; Total Federal Penalty Assessed: \$3,000;  
Total Cost of SEP: \$10,000

**Supplemental Environmental Project: Equipment to LEPC** <sup>25</sup>

**Facility: Citgo**

**Violations/Allegations: (by United States Department of Justice and EPA, Consent Decree)**

Undertook major modifications of its FCCUs, process heaters and boilers and a sulfuric acid plant without undergoing PSD/NSR review, without obtaining all appropriate permits, and without installing BACT for the control of those pollutants for which a significant net emissions increase occurred.

Violations of the NSPS requirements applicable to FCCU catalyst regenerators, sulfur recovery plants, flaring devices, heaters and boilers, and a sulfuric acid plant

Violations of the federal LDAR requirements

Violations of the benzene waste NESHAP

**Penalty:** 3.6 million

**Cost of SEP:** 5 million

**Supplemental Environmental Project: Replacement of three natural gas-fired compressors with an electrical compressor** <sup>26</sup>



**Koch West**

**Facility: Koch Industries**

**Violations/Allegations:** (US Department of Justice, US Environmental Protection Agency, Texas Attorney General's Office, January, 2000)

- 41,000 barrels of oil spilled by Koch in Texas from 1990 – 1997. Evidence indicated the leaks resulted from a variety of preventable factors including corrosion, improper operations and lack of inspections.

**Settlement:** \$35,000,000 largest Civil penalty ever imposed under the federal Clean Water Act in U.S. history.

**Cost of total SEP:** \$5 million

**Local Supplemental Environmental Projects:**

**\$1.5 million to the Coastal Bend Bays & Estuaries program**

**\$350,000 to the Corpus Christi Fire Department for the purchase of hazardous materials response vehicle**

**\$150,000 to Corpus Christi/Nueces County LEPC to purchase warning system**

**\$500,000 to Resource Conservation and Development, Inc <sup>27</sup>**

**Facility: Citgo Refinery**

**Violations/Allegations:** (from TNRCC Aug. '99)

- Air and water violations dating back to 1994
- Groundwater contamination detected as far back as 1981.
- Operating a surface impoundment without a permit and emitting hydrogen flouride, volatile organic compounds and hydrogen sulfide without proper authorization.

**Fine:** \$650,000

**Cost of SEP:** \$325,000

**Supplemental Environmental Project: contribution to the Nature Conservancy of Texas for preservation project on Mustang Island that will benefit the organization's bird nesting site on Shamrock Island <sup>28</sup>**



The Huisache state monitor is located in the Oak Park Triangle. This monitor began operating in October 1997 and immediately began showing high levels of benzene. The intersection where this monitor is located was also a school bus stop for children that lived in this fence-line community until the buy-out in 1999.

This monitor ranked first in the entire state of Texas for benzene emissions in 2002.

**Benzene is a known carcinogen. Refineries bordering this site are Citgo East, Koch (Flint Hills) East, and Valero East.**

**Facility: Amerada Hess**

**Violations/Allegations:** (from TNRCC, August '99)

- Wastewater and groundwater violations

**Fine:** \$325,000

**Cost of SEP:** \$139,000

**Supplemental Environmental Project: contribution to Coastal Conservation Association for a debris cleanup project**<sup>29</sup>

**Facility: Citgo Refinery, 1801 Nueces Bay Blvd.**

**Violations:** (by TCEQ February 11, 2004)

- Failed to submit notifications of upset emission in a timely manner
- Failed to comply with emissions limits applicable to the East and West Plant sulfur recovery units
- Failed to prevent fuel gas burned in combustion devices from containing excess Hydrogen Sulfide
- Failed to comply with limits on emissions from Fluid Catalytic Cracking units
- Failed to provide notification of hazardous waste management areas; to properly label drums of hazardous waste, maintain a container of hazardous waste closed except when adding or removing waste, and mark hazardous waste containers in excess of 55 gallons with an accumulation state date
- Failed to prevent the unauthorized discharge of industrial or other waste
- Failed to prevent oil carryover from oil-water separators or to equip oily wastewater storage vessels with a fixed roof; failure to equip an oil-water separator tank with a closed vent system and control device; by operating the CPI separator without a flare; failure to submit periodic reports; failure to conduct inspections (continued on Page 15)

- Failed to (a) conduct inspections of individual drain systems; (b) to equip tanks; (c) to submit a complete total annual benzene report; (d) to determine the flow-weighted annual average benzene concentration; (e) to limit the benzene quantity in uncontrolled waste streams; (f) to determine the total annual benzene quantity from each facility waste stream
- Failed to comply with flare pilot operation requirements applicable to the Fluor flare or to obtain regulatory authority for uncombusted emissions from that flare
- Failed to comply with its TPDES permit, including but not limited to failure to properly operate and maintain the process wastewater and storm water collection systems; to limit effluent characteristics; to use the proper method for collecting samples for the analysis of the oil and grease; to collect benzene samples at required intervals; to record all required information for storm water monitoring and reporting; to record quality control/quality assurance data for the analysis of pH and chlorine; and to monitor and record temperatures inside refrigerators used for the storage of samples prior to analysis
- Failed to comply with emission limits during vessel loading operations
- Failed to limit emissions released from the Unibon Unit
- Failed to limit emission released from the Hydrar Unit
- Failed to obtain appropriate regulatory for sour water and acid gas flares as installed and operated at the East and West Plants
- Failed to submit timely and complete federal operating permit compliance certifications and deviation reports
- Failed to demonstrate initial compliance with emission tests of Compressor Nos.1A,1B and 1C

**Administrative Penalty:** \$1,740,000; \$870,000 will be offset upon the completion of a SEP  
**Cost of SEP:** \$870,000

**Supplemental Environmental Project: Corpus Christi Air Monitoring and Surveillance Camera Project**<sup>30</sup>

**Facility: Koch Petroleum Group**

**Violations/Allegations:** (by United States of America and Minnesota) Consent Decree agreement involving 3 facilities: 1 in Rosemount, Minnesota and Clear Air Act (CAA) violations at 2 in Corpus Christi, Texas.

- CAA Issues address in settlement: Prevention of Significant Deterioration/New Source Review (PSD/NSR); benzene waste National Emission Standard for Hazardous Air Pollutants (NESHAP); leak detection and repair (LDAR); and flaring.

**Total Federal Penalty Assessed:** \$4,500,000

**Cost of SEP:** \$2,000,000

**Supplemental Environmental Project: Install heater and boiler controls; eliminate at Corpus Christi, TX, and reduce at Minnesota, fuel oil burning; and install a flare gas recovery system; re-route sour water stripper gas from flares/incinerators**<sup>31</sup>

**Facility: Encycle/Texas, Inc.**

**Violations/Allegations:** (by United States and State of Texas, May 4, 1999)

- Hazardous waste regulations associated with materials management practices in Corpus Christi, Texas and Asarco's facilities in East Helena Montana, El Paso, TX and Amarillo Texas.

**Penalties:** \$5.5 million (2 million to be paid to the state of Texas)

**Supplemental Environmental Project in Corpus Christi:** Permanent 30-acre environmental conservation area for public use, maintained by ASARCO<sup>32</sup>



Although Encycle/Asarco has had years to complete this SEP, the project is only 40% complete. Per the consent decree, Asarco is required to submit semi-annual progress reports describing progress in the establishment of the conservation area. In the 11<sup>th</sup> progress report (January 12, 2005), Asarco cited various problems including difficult financial conditions<sup>33</sup>.

**Facility: Citgo Refining, 1801 Nueces Bay Blvd. and 7350 Interstate Highway 37**

**Violations/Allegations:** (by TNRCC, August 7, 2002 - The complete list of violations from this enforcement action against Citgo were too numerous to list in this report. Below is a fraction of the violations)

- Failed to maintain results of outer seal inspections on the floating roofs of certain crude oil storage tanks
- Failed to maintain records of monthly and year-to-date throughput of tank # 5001 – 5008 in order to ensure compliance with the annual throughput limits
- Failed to operate storage tank # 5006 and 5008 within the temperature limits represented in its permit application. In its permit application to TNRCC CITGO represented that the tanks

would be operated at 90 degrees Fahrenheit (F), but CITGO operated the storage tanks as high as 101.5 degrees F for Tank No 5006 and 102.4 degrees F for Tank No. 5008 during June 1997.

- Failed to provide notification of the actual date of initial startup of Tank No. 1016 and failing to maintain records of internal floating roof tank inspections. CITGO also failed to submit a report to the Administrator of the East Plant describing the control equipment and certifying that the control equipment meets specifications.
- Failed to maintain records and provide, as requested, the annual throughput of each diesel storage tank in Area 91
- Failed to provide seal inspection records to verify seal integrity on Storage Tank No. 1027 and failed to provide notification of tank seal inspections
- Failed to maintain records with include the monthly and year-to-date volatile organic compound (VOC) throughput for Storage Tank Nos. 13, 14, 20, 40, 41, 42, 50, 929, and 930 and failed to maintain accurate calculated emissions for these tanks and tank Nos. 4, 1023 and 1027.
- Failed to maintain records of the annual floating roof seal inspections on Tank Nos. 57, 82, 83, 201, 202, 211, 212, 222, 223, 301, 302, 402, 403, 1011, 1014, 1029, 1030, and 1031. CITGO failed to maintain any records to demonstrate compliance.
- Failed to comply with emissions limitations – year-to-date records submitted by CITGO for the East Plant for year 1997 demonstrate that VOC emissions exceeded the allowable tons per year.
- Failed to properly conduct fugitive monitoring and failing to monitor on an annual basis, with a hydrocarbon gas analyzer, the emissions from all process drains.
- Failed to comply with the 3 percent limitation of total number of valves designated as difficult-to-monitor or hard to monitor (HTM) – CITGO has designated more than 3.0 percent of the total number of valves as difficult-to-monitor.
- Failed to mark pipeline valves and pressure relief valves in gaseous VOC service in a manner readily obvious to monitoring personnel. None of the pipeline valves and pressure relief valves were marked stating the applicable components in the gaseous VOC.
- Failed to provide any documentation for Boiler B including any notifications. CITGO apparently purchased Boiler B from BASF Wyandott in approximately 1984. CITGO failed to notify the TNRCC, or its predecessor agency, of the initial startup of the boiler and CITGO did not notify the TNRCC of the date of construction, or reconstruction, of the Boiler.
- Failed to conduct a performance test on Boiler B. The test was required since CITGO modified the operations of the Boiler by using natural gas to supplement its refinery fuel gas. Citgo began using Boiler B in March 1984.
- Failed to comply with the maximum hourly nitrogen oxides (NO<sub>x</sub>) emission rate listed in the MAER Table for the Carbon Monoxide (CO) Boiler Stack on October 21, 1997 for at least five hours. The MAER Table limits the NO<sub>x</sub> emissions to 110 pounds per hour. On October 21, 1997, CITGO allowed No<sub>x</sub> emission of 112.78 pounds per hour at 1:00 p.m.; 131.35 pounds per hour at 4:00 p.m.; 121.41 pounds per hour at 5:00 p.m.; 117.28 pounds per hour at 6:00 p.m.; and 113.42 pounds per hour at 7:00 p.m.
- Failed install, calibrate, and maintain a continuous emission monitoring system (CEMS) to measure and record the in-stack concentration of NO<sub>x</sub> from the CO Boiler Stack. Citgo did

not record CEMS certification until April 1995, which was 17 months after the permit renewal authorization.

- Failed to comply with the combined total fuel consumed limit of 438 million british thermal units per hour (MMBtu/hour) for boilers 60-B-1C, 61-B-1A and 61-B-1B. On March 31, 1997 CITGO exceeded the combined limit of 438 MMBtu/hour when all 3 boilers were in operation. The excess ranged from 443 to 518 MMBtu/hour.

**Penalty:** \$750,000 with \$375,000 of that amount offset upon Citgo's completion of a SEP

**SEP Cost:** \$375,000

**Supplemental Environmental Project: Remote Vehicle Emissions Sensor Project to pay for the cost of acquiring a remote vehicle emissions sensor and "smart sign," for maintenance costs of the sensor. The sensors will be used in car care clinics held throughout Corpus Christi and Nueces County <sup>34</sup>.**



**Citgo East**



**Valero Refining Company**

Local SEPs resulting from the June 2005 Consent Decree Agreement between Valero and EPA were: 1) \$1,000,000 to install a redundant Hydrodesulfurization unit (HDS) off gas compressor and related equipment; 2) \$500,000 to replace inefficient single seal pump seals with dual seals and/or routing any seal leakage to a control device; 3) \$300,000 to implement truck and vehicle emission reduction <sup>35</sup>.

#### **SEPs listed by TCEQ for Nueces County**

1. Coastal Bend Bays and Estuaries Program: Colonial Waterbird Rookery Enhancement Project
2. Coastal Conservation Association: Big Bay Debris Clean- Up
3. Nature Conservancy: Mustang Island Acquisition
4. Nature Conservancy: Freshwater Wetland Restoration
5. Nature Conservancy: Coyote Island Acquisition
6. View State Wide Projects available in this county
7. Texas A & M Kingsville: South Texas Wetland and Water Reuse Project
8. Texas A & M Kingsville: South Texas Native Plant Restoration Seed Collection Project
9. Texas A & M Kingsville: South Texas Native Plant Restoration Native Seed Increase and Native Plant Growing Project
10. Texas Environmental Education Partnership Fund (TEEP): Ozone monitor installation at schools
11. University of Texas- Austin: Corpus Christi Air Monitoring and Surveillance Camera Installation and Operation Project
12. University of Texas at Austin Marine Science Institute: UTMSI Wetlands Center

## Conclusion and Recommendation

For several decades people of color and low-income have been subjected to tremendous amounts of pollution from normal operations from refinery and chemical plants, from numerous upsets as well as the added toll to their health when companies violate the law.

EPA's Supplemental Environmental Projects Policy (May 1, 1998) states in part:

*There is an acknowledged concern, expressed in Executive Order 12898 on environmental justice, that certain segments of the nation's population, i.e., low-income and/or minority populations, are disproportionately burdened by pollutant exposure. Emphasizing SEPs in communities where environmental justice concerns are present helps ensure that persons who spend significant portions of their time in areas, or depend on food and water sources located near, where the violations occur would be protected.*

However, a review of local SEPs indicates that the projects that are chosen over and over again do not address environmental justice therefore do not directly benefit the community affected by the violations. Time and again, SEPs are awarded to other projects; left out of the equation is the impacted community itself that had to bear the burden to their health from these violations.

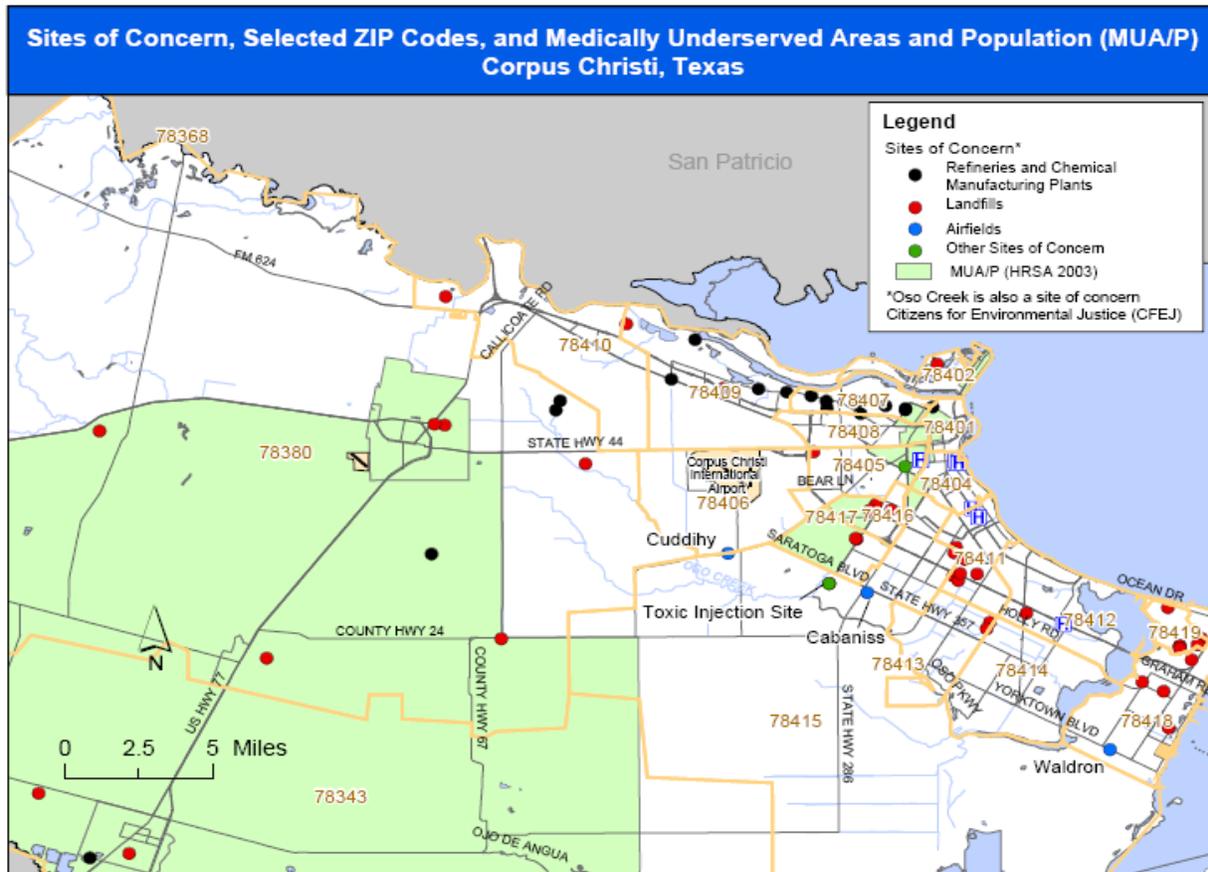
- **Address the root of the problem – Take the power to choose SEPs out of the hands of the violators.** There is something terribly wrong with a system that allows the violator to choose which SEP it will perform. SEPs are a result of an enforcement action and it makes absolutely no sense that the violator would be given any special privileges.

When a person goes before the court because he/she has broken the law, the criminal does not get to pick what their punishment will be and what they will and will not do. Yet in this case, legislators have given this privilege erroneously to industry.

- **Legislators must introduce bills that would change the current law that gives violators the authority to choose SEPs.** The violator benefits tremendously when they choose to perform a SEP because their penalty is greatly reduced. In addition, under the current legislation, the violator is given the authority to choose which SEP it will perform. It's wrong that so much consideration is given to the violator and little to the violated.

Legislation must be passed that would take the power out of the hands of the violator- the power that enables them to choose which SEP they will perform. Until this much-needed change in legislation takes place, industry has a responsibility to perform SEPs that would directly benefit the impacted community – SEPs that the community would like to see performed - and the TCEQ, EPA and the Department of Justice must strongly encourage this. Moreover, industry can elect to approach a community to discuss projects that the community feels would be beneficial. There are numerous projects that can directly benefit the community. Below is just one example:

- Public Health:** EPA Supplemental Environmental Project Overview “Public Health” category states that a SEP may include examining residents in a community to determine if anyone has experienced any health problems because of the company’s violations. A project that looks at health impact from company’s violations is long overdue. Key to the success of such a project would be that the people charged with conducting the health assessment be completely independent of industry, directly and indirectly. In addition, communities of color and low-income are often medically underserved. Several census tracts in Corpus Christi are designated medically underserved areas (MUA).



Environmental health is typically an elective in medical schools. Due to the fact that it is not a required subject, environmentally induced conditions might be misdiagnosed. It’s necessary to have physicians and staff trained on environmental health and located in communities that are overburdened with pollution.

- Meaningful Community Input:** In order for input from the community to be consequential, the input would have to take place before negotiations between the violator and government are complete. To be asked to comment after the negotiations are complete is pointless. It gives the illusion of meaningful community input when in fact it isn’t being allowed.

For example, On July 23, 2005, Citizens for Environmental Justice, Refinery Reform Campaign, and the Environmental Integrity Project submitted written comments to the U.S. Department of Justice regarding the Valero Consent Decree Agreement<sup>36</sup>. With regard to the Supplemental Environmental Projects section of the Decree, the commenters' stated, in part: "*The parties failed to provide the community with meaningful input with regard to the Supplemental Environmental Project (SEPs) selected under the settlement.*"<sup>37</sup>

The United States responded by saying: "*The Commenters are correct in that they were not included in the parties' discussion of SEP projects under the Decree. SEPs are determined as part of the overall settlement negotiation, and, as such, the discussions are not generally made public. As done in the majority of cases, Valero proposed potential projects which were then reviewed by the EPA, the Department of Justice, and State Interveners to determine whether the proposed projects met with guidelines of EPA's SEP policy and that the amount of the expenditure was appropriate for penalty mitigation...*"<sup>37</sup>

Part of the injustice is the exclusion of community participation in the decision-making process. This participation must exceed the advisory capacity; to be meaningful the impacted community must have an authoritative seat at the table. Moreover, in order for the input to be meaningful, community should be involved in early stages of settlement agreements and not limited only to the public comment stage, after the violator and government have completed negotiations.

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<sup>1</sup> Texas Natural Resource Conservation Commission (Aug. 7, 2002) Enforcement Action Concerning Citgo (TNRCC Docket No. 1999-0057-AIR-E).

<sup>2</sup> Texas Natural Resource Conservation Commission (Aug. 7, 2002) Enforcement Action Concerning Citgo (TNRCC Docket No. 1999-0057-AIR-E) Pg. 12.

<sup>3</sup> "Chemical profiles: Benzene," Scorecard, Environmental Defense, [www.scorecard.org](http://www.scorecard.org).

<sup>4</sup> Texas Natural Resource Conservation Commission (Aug. 7, 2002) Enforcement Action Concerning Citgo (TNRCC Docket No. 1999-0057-AIR-E) Attachment "A."

<sup>5</sup> Lawrence, Guy, "Citgo, Amerada Hess fined for Environmental Violations," *Corpus Christi Caller-Times*, August 26, 1999.

<sup>6</sup> Environmental Protection Agency, "EPA Supplemental Environmental Project Overview: Protecting and Enhancing Public Health and the Environment," Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, Washington, D.C.: 2004.

<sup>7</sup> Environmental Protection Agency, "EPA Supplemental Environmental Project Overview: Protecting and Enhancing Public Health and the Environment," Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, Washington, D.C.: 2004.

- <sup>8</sup> Environmental Protection Agency, "EPA Supplemental Environmental Project Policy," Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, Washington, D.C.: 2004.
- <sup>9</sup> URS, Benzene Monitoring Program, Presented to Corpus Christi Community Advisory Council Long-term Health Work Group, Feb. 11, 2004.
- <sup>10</sup> United States Department of Justice, "Koch Pleads Guilty to Covering Up Environmental Violations At Texas Oil Refinery," Press Release, April 9, 2001.
- <sup>11</sup> Carman, Neil. "re: question." E-mail to Suzie Canales. 01 Aug 2004.
- <sup>12</sup> "DP-1 Profile of General Demographic Characteristics: 2000 Data Set: Census 2000 Summary File 1 (SF-1) 100 Percent Data Geographic Area: Census Tract 4,5,6,7,11 Nueces County, Texas" American FactFinder. 2000. Bureau of the Census. 23 July 2001 <<http://factfinder.census.gov/servlet/BasicFactsServlet>>.
- <sup>13</sup> *United States of America, State of Georgia, State of Illinois, State of Louisiana, State of New Jersey v. Citgo* No. H-04-CV-3883 Plaintiff's Memorandum in support of unopposed Motion to Enter Consent Decree, Pg. 24.
- <sup>14</sup> *United States of America, State of Georgia, State of Illinois, State of Louisiana, State of New Jersey v. Citgo* No. H-04-CV-3883 Plaintiff's Memorandum in support of unopposed Motion to Enter Consent Decree, Exhibit 3.
- <sup>15</sup> *United States of America, State of Georgia, State of Illinois, State of Louisiana, State of New Jersey v. Citgo* No. H-04-CV-3883 Plaintiff's Memorandum in support of unopposed Motion to Enter Consent Decree Exhibit 5.
- <sup>16</sup> *United States of America, State of Georgia, State of Illinois, State of Louisiana, State of New Jersey v. Citgo* No. H-04-CV-3883 Plaintiff's Memorandum in support of unopposed Motion to Enter Consent Decree, Pg. 35.
- <sup>17</sup> *United States of America, State of Georgia, State of Illinois, State of Louisiana, State of New Jersey v. Citgo* No. H-04-CV-3883 Plaintiff's Memorandum in support of unopposed Motion to Enter Consent Decree, Pg. 5.
- <sup>18</sup> Pena, Cindy. Personal Interview. 30 Jun 2005.
- <sup>19</sup> Environmental Protection Agency SEP Freedom of Information Act Response, ICIS Fiscal Year 2005, Received April 1, 2005.
- <sup>20</sup> "Enforcement Case Report." Enforcement and Compliance History Online. 09 June 2005. Environmental Protection Agency. 01 Jul. 2005 <<http://www.epa.gov/cgi-bin/get1cReport.cgi?IDNumber=0620032910&tool=eici>>.
- <sup>21</sup> Texas Natural Resource Conservation Commission. (1999). *Enforcement Action Concerning Trifinery Petroleum* (TNRCC Docket No. 1999-1367-AIR-E). Austin, TX.
- <sup>22</sup> Texas Natural Resource Conservation Commission. (1998). *Enforcement Action Concerning Diamond Shamrock* (TNRCC Docket No. 1998-0225-IHW-E). Austin, TX.
- <sup>23</sup> Texas Commission on Environmental Quality. (2002). *Enforcement Action Concerning Williams Terminals* (TCEQ Agreed Order Docket No. 2002-1234-AIR-E). Austin, TX.
- <sup>24</sup> Texas Natural Resource Conservation Commission. (1999). *Enforcement Action Concerning Ticona Polymers* (TNRCC Docket No. 1999-0019-AIR-E). Austin, TX.
- <sup>25</sup> "Enforcement Case Report." Enforcement and Compliance History Online. 08 July 2005. Environmental Protection Agency. 08 Jul. 2005 <<http://www.epa.gov/cgi-bin/get1cReport.cgi?IDNumber=06-2004-2908&tool=eici>>
- <sup>26</sup> *United States of America, State of Georgia, State of Illinois, State of Louisiana, State of New Jersey v. Citgo*. No. H-04-CV-3883. Plaintiff's Memorandum in support of unopposed Motion to Enter Consent Decree.
- <sup>27</sup> Cornyn, John. "Cornyn, Garza Announce \$35 Million Settlement With Koch Industries, Largest Penalty Ever Recovered by Texas Under State Environmental Laws." Press Release. January 13, 2000.
- <sup>28</sup> Lawrence, Guy. "Citgo, Amerada Hess fined for Environmental Violations" *Corpus Christi Caller-Times*, August 26, 1999.
- <sup>29</sup> Lawrence, Guy. "Citgo, Amerada Hess fined for Environmental Violations" *Corpus Christi Caller-Times*, August 26, 1999.
- <sup>30</sup> Texas Commission on Environmental Quality. (2001). *Enforcement Action Concerning Citgo Refinery* (TCEQ Docket NO. 2001-1469-AIR-E) Austin, TX.
- <sup>31</sup> "Enforcement Action Summary Fiscal Year 2001." EPA Region 5 Regional Counsel (20 June 2006) <<http://www.epa.gov/Region5/orc/enfactions/enfactions2001/law-mm.htm>>
- <sup>32</sup> "Notice of Consent Decree Under The Resource Conservation and Recovery Act and Clean Water Act" Endangered Species and Wetland Report (May 4, 1999): <<http://www.eswr.com/cd0549.txt>>
- <sup>33</sup> Asarco Letter to Environmental Protection Agency and Texas Commission on Environmental Quality. January 12, 2005. Regarding U.S. and Texas vs. Encycle/Texas and Asarco, Civil Action No. H-99-1136.
- <sup>34</sup> Texas Natural Resource Conservation Commission. (1999). *Enforcement Action Concerning Citgo Refinery* (TNRCC Docket No. 1999-0057-AIR-E). Austin, TX.
- <sup>35</sup> *United States of America and the states of Colorado, Louisiana, New Jersey, Oklahoma, and Texas vs. Valero Refining and Tesoro Refining*. Consent Decree, Pages 152-155.
- <sup>36</sup> "Local and National Environmental Groups Object to EPA Valero Consent Decree Agreement," Press Release, Citizens for Environmental Justice, National Refinery Reform Campaign, Environmental Integrity Project, July 23, 2005.
- <sup>37</sup> *United States of America and the States of Colorado, Louisiana, New Jersey, Oklahoma and Texas v. Valero Refining and Tesoro Refining*. Motion to Enter Consent Decree, Civil Action No. SA-05-CA0569, Pages 23 and 24.