

**U. S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D. C.**

_____)	
In the Matter of:)	
)	Administrative Settlement
ALONUSA Energy, Inc.)	Agreement
)	AED/MSEB # 7852
Respondent.)	
_____)	

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and ALON USA Energy, Inc. (Respondent), regarding Respondent's compliance with the requirements of the Clean Air Act (CAA) and the regulations promulgated thereunder at 40 C.F.R. Part 80, Subparts H and I, the gasoline sulfur and diesel fuel sulfur regulations (the sulfur regulations).

Purpose:

1. The purpose of this Agreement is to resolve alleged noncompliance by Respondent with the requirements of the sulfur regulations as described herein.

Statutory and Regulatory Authority:

2. EPA promulgated the sulfur regulations pursuant to section 211(c) of the CAA, 42 U.S.C. § 7545(c).
3. The sulfur regulations are part of a comprehensive national program to greatly reduce emissions from gasoline and diesel engines by integrating engine and fuel controls.
4. As a result of certain compliance issues concerning small refiners, the sulfur regulations provide several compliance flexibilities for small refiners.

5. 40 C.F.R. § 80.235 provides that refiners may apply for small refiner status under the gasoline sulfur regulations and, if approved by EPA, a refinery owned by a small refiner is subject to less stringent small refiner gasoline sulfur standards under 40 C.F.R. § 80.240 through calendar year 2007.
6. 40 C.F.R. § 80.553 provides an additional flexibility option for small refiners that produce motor vehicle diesel fuel. A refinery owned by a small refiner may continue to produce gasoline subject to the small refiner gasoline sulfur standards through calendar year 2010, if the refinery produces 95% of its motor vehicle diesel fuel to meet the ultra low sulfur diesel standard of 15 parts per million sulfur content.
7. 40 C.F.R. § 80.230(b) provides that under certain circumstances a small refiner may lose its small refiner status. Where a refiner is disqualified as a small refiner, its refineries must meet the gasoline sulfur standards under 40 C.F.R. § 80.195 within 30 months of the disqualifying event. However, a disqualified refiner may apply to EPA for an additional six months to comply with the gasoline sulfur standards under 40 C.F.R. § 80.195 if more than 30 months will be required for the necessary engineering, permitting, construction, and start-up work to be completed.

Background:

8. In May, 2001, EPA approved Respondent's status as a small refiner under 40 C.F.R. § 80.235 of the gasoline sulfur regulations. As a result, the Respondent's Big Spring refinery, located in Texas, became subject to the applicable small refinery gasoline sulfur standards set forth in 40 C.F.R. § 80.240 through calendar

year 2007. In October, 2003, EPA granted an extension of the small refinery gasoline sulfur standards for the Big Spring refinery through calendar year 2010, pursuant to 40 C.F.R. § 80.553 of the diesel fuel sulfur regulations.

9. On September 28, 2006, Respondent acquired an additional refinery, which caused it to exceed the number of employees allowed to qualify as a small refiner. As a result, pursuant to 40 C.F.R. § 80.230(b), Respondent was disqualified from small refinery status for all its refineries, including the Big Spring refinery, starting 30 months after the disqualifying event. Respondent subsequently applied to EPA for an additional 6 months for the Big Spring refinery to be subject to the small refiner gasoline sulfur standards of 40 C.F.R. § 80.240, under the provisions of 40 C.F.R. § 80.230(b). By letter of July 3, 2007, EPA approved the 6 month extension, which allows the Big Spring refinery to produce gasoline subject to the small refinery gasoline sulfur standards until September 28, 2009.
10. In February, 2008, the Respondent's Big Spring refinery experienced a major fire. Respondent represents that the fire resulted in over \$~~200,000,000~~ in damages and in unrecoverable losses exceeding \$~~20,000,000~~.
11. Respondent represents that it has made, and continues to make, best efforts to be able to produce gasoline that meets the sulfur standards set forth in 40 C.F.R. § 80.195 as expeditiously as practicable. However, because of the extent of damage caused by, and repairs necessary to recover from, the fire Respondent represents that it is unlikely to meet the per-gallon and average gasoline sulfur standards of 40 C.F.R. § 80.195 by the September 28, 2009, deadline.

Agreement:

12. Subject to all the terms and conditions of this Agreement, beginning September 28, 2009, and ending no later than December 31, 2009, Respondent may produce gasoline at the Big Spring refinery that meets the applicable sulfur standards under 40 C.F.R. § 80.240 if it cannot meet the standards under 40 C.F.R. § 80.195 during this period. Respondent must meet the gasoline sulfur standards under 40 C.F.R. § 80.195 as soon as practicable and in no event may it produce gasoline that does not meet the standards of 40 C.F.R. § 80.195 subsequent to December 31, 2009.
13. Starting September 28, 2009, and ending no later than December 31, 2009, any gasoline produced at the Big Spring refinery that fails to meet the per-gallon cap sulfur standard of 80 parts per million (ppm) under 40 C.F.R. § 80.195 shall be accompanied by product transfer documents that classify the gasoline as small refiner gasoline as provided in 40 C.F.R. § 80.210(e).
14. Respondent as [REDACTED] will comply with all provisions of the gasoline and diesel fuel regulations under 40 C.F.R. Part 80 except as set forth in this Agreement.
15. Respondent agrees that no later than the annual gasoline sulfur reporting date of February 28, 2011, for the calendar year 2010 compliance averaging period, it will retire gasoline sulfur credits as provided in this Paragraph 15 to offset the excess sulfur content of gasoline produced by the Big Spring refinery that does not meet the 30.00 ppm sulfur content average standard set forth in 40 C.F.R. § 80.195 for the period September 28, 2009, through no later than December 31,

2009. In computing whether Respondent has met the average sulfur content standard at any point in time, Respondent shall include all the gasoline it has produced at the Big Spring refinery for each period specified in Paragraph 15.a-c, as applicable. The final date that may be used for purposes of computing its sulfur content average shall be December 31, 2009. Respondent may retire credits that it generates in 2010, or purchase credits within the 2010 compliance and reporting year, or both, and retire them to offset the excess sulfur content, as follows:

- a. Period Commencing September 28, 2009: For any portion of the 30 calendar day period commencing September 28, 2009, and ending October 27, 2009, that the Big Spring refinery fails to meet the average sulfur content standard of 30.00 ppm, Respondent shall retire 1.25 ppm gallon gasoline sulfur credits for every 1.00 ppm gallon that the Big Spring refinery exceeds the 30.00 ppm average.
- b. Period Commencing October 28, 2009: For any portion of the 15 calendar day period commencing October 28, 2009, and ending November 11, 2009, that the Big Spring refinery fails to meet the average sulfur content standard of 30.00 ppm, Respondent shall retire 1.50 ppm gallon sulfur credits for every 1.00 ppm gallon that the Big Spring refinery exceeds the 30.00 ppm average.
- c. Period Commencing November 12, 2009: For any portion of the period of time commencing November 12, 2009 and ending December 31, 2009 that the Big Spring refinery fails to meet the average sulfur content standard of

30.00 ppm, Respondent shall retire 2.00 ppm gallon sulfur credits for every 1.00 ppm gallon that the Big Spring refinery exceeds the 30.00 ppm average.

d. If the Big Spring refinery does not exceed the 30.00 ppm average during the 30-day period as specified in Paragraph 15.a above, the provisions of Paragraphs 15.b and c shall not apply and Respondent shall thereafter be subject to and comply with 40 C.F.R. § 80.195.

e. If Respondent does not exceed the 30.00 ppm average during the 15-day period as specified in Paragraph 15.b above, the provisions of Paragraph 15.c shall not apply and Respondent shall thereafter be subject to and comply with 40 C.F.R. § 80.195.

16. Respondent shall notify EPA regarding its compliance with this Agreement by no later than March 15, 2011, by mailing all relevant information on Big Spring refinery gasoline production volume, average gasoline sulfur content, ppm gallon credits retired, and the sources of the credits to the following address:

Erv Pickell
U.S. Environmental Protection Agency
OECA/AED/Western Office (8MSU)
1595 Wynkoop Street
Denver, CO 80202 - 1129

In addition, Respondent shall notify EPA if either of the conditions specified in Paragraphs 15.d or 15.e are met by no later than 7 business days following the end of the applicable averaging period.

Stipulated Penalties:

17. Respondent agrees to pay stipulated penalties of \$1,000 per day if it fails to obtain and retire sufficient gasoline sulfur credits prior to March 1, 2011, as required by Paragraph 15 of this Agreement. Payment of stipulated penalties shall continue until such time that sufficient credits have been retired.

General Provisions:

18. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time a copy will be returned to Respondent.
19. Notwithstanding any other provision of this Agreement, the parties agree that upon default or failure of Respondent to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General to commence a civil action pursuant to CAA section 205(b), 42 U.S.C. § 7524(b), commence an action to enforce this Agreement or to recover a civil penalty pursuant to CAA section 205(c), 42 U.S.C. § 7524(c) or pursue any other remedies available to it. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of the passage of time. Respondent acknowledges that its tax identification number may be used for the purpose of collecting or reporting any delinquent monetary obligation arising from this agreement. (See 31 U.S.C. § 7701.)
20. The parties represent that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.

21. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters consented to herein.
22. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
23. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations described in Paragraphs 10 and 11 of this Agreement.

Effect of Agreement:

24. Upon completion of the terms of this Agreement, the alleged violations described shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement, for violations of CAA section 211, 42 U.S.C. § 7545, which are not the subject matter of this Agreement, for other violations of law, or with respect to other matters not within the scope of the Agreement. This Agreement in no way affects or relieves Respondent of responsibility to comply with other state, federal, or local laws or regulations.

*Administrative Settlement Agreement – In the Matter of ALON USA Energy, Inc. -
AED/MSEB # 7852*

The following agree to the terms of this Agreement:

ALON USA Energy, Inc.

By: *Joseph A. Conciennre, III* Date: 9-25-09

Typed or Printed Name: Joseph A. Conciennre, III

Typed or Printed Title: Dr. Vice President of Refining

Federal Tax Identification Number: 75-2876744

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United States Environmental Protection Agency

By: Pamela J. Mazakas
Pamela J. Mazakas
Acting Director
Air Enforcement Division

Date: 9/25/09