

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:

Alon USA, LP,

Respondent.

Docket No.
CAA-HQ-2018-8194

CONSENT AGREEMENT

Preliminary Statement

1. This is a civil administrative penalty assessment proceeding instituted under sections 205(c)(1) and 211(d)(1) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7524(c)(1) and 2545(d)(1). The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
2. Complainant in this matter is the United States Environmental Protection Agency ("EPA"). On the EPA's behalf, Phillip A. Brooks, Director, Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized by lawful delegation to institute and settle civil administrative penalty assessment proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1).
3. Respondent in this matter is Alon USA, LP ("Alon"). Respondent is a limited partnership organized under the laws of the State of Texas with an office at 1200 Park Central Drive, Suite 1600, Dallas, Texas 75251. Alon is a refiner that operates a petroleum refinery with a 73,000 barrel-per-day capacity located in Big Spring, Howard County, Texas ("Big Spring Refinery").

4. The EPA and Respondent, having agreed to settle this action, consent to the entry of this Consent Agreement and the attached Final Order before taking testimony and without adjudication of any issues of law or fact herein, and agree to comply with the terms of this Consent Agreement and the attached Final Order.

Jurisdiction

5. This Consent Agreement is entered into under sections 205(c)(1) and 211(d)(1) of the CAA, 42 U.S.C. §§ 7524(c)(1) and 7545(d)(1), and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22 (“Consolidated Rules”).
6. The EPA may administratively assess a civil penalty for violations that occur after January 12, 2009, through December 6, 2103, if the penalty sought is less than \$320,000. 42 U.S.C. §§ 7524(c)(1), 7545(d)(1); 40 C.F.R. § 19.4.
7. The Administrator and the Attorney General jointly determined that this matter, although it involves a penalty amount greater than \$320,000, is appropriate for administrative penalty assessment. 42 U.S.C. §§ 7524(c)(1), 7545(d)(1); 40 C.F.R. § 19.4.
8. The Environmental Appeals Board is authorized to issue consent orders memorializing settlements between the EPA and Respondent resulting from administrative enforcement actions under the CAA, and to issue final orders assessing penalties under the CAA. 40 C.F.R. § 22.4(a)(1); EPA Delegation 7-41-C.
9. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously

commenced and concluded by the issuance of a Consent Agreement and Final Order.
40 C.F.R. §§ 22.13(b), 22.18(b).

Governing Law

10. This proceeding arises under Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution by, amongst other things, reducing emissions from fuel used in motor vehicles, nonroad vehicles, and engines and ensuring that fuel used in motor vehicles, nonroad vehicles, and engines does not harm the emissions control technology necessary to meet emissions standards.
11. The Alleged Violations of Law, stated below, include violations of the gasoline volatility standards at 40 C.F.R. § 80.27(a)(2). What follows is a summary of the law that governs these allegations.
12. Definitions:
 - (a) “Gasoline” means any fuel sold in any State for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline. 40 C.F.R. § 80.2(c).
 - (b) “Refiner” means any person who owns, leases, operates, controls, or supervises a refinery. 40 C.F.R. § 80.2(i).
 - (c) “Refinery” means any facility, including but not limited to, a plant, tanker truck, or vessel where gasoline or diesel fuel is produced, including any facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel. 40 C.F.R. § 80.2(h).

13. Section 211 of the CAA, 42 U.S.C. § 7545, contains numerous provisions to ensure that only compliant fuels and fuel additives are produced and distributed in the United States.
14. Under section 211(c)(1) of the CAA, 42 U.S.C. § 7545(c)(1), the EPA may adopt a fuel control if at least one of the following two criteria is met: (1) the emission products of the fuel cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare; or (2) the emission products of the fuel will significantly impair emissions control systems in general use or emissions control systems that will be in general use were the fuel control to be adopted.
15. Pursuant to its authority under section 211(c)(1) of the CAA, 42 U.S.C. § 7545(c)(1), the EPA promulgated the “volatility regulations” at 40 C.F.R. § 80.27 to reduce emissions of volatile organic compounds that are a major contributor of ground-level ozone by requiring refiners to limit the Reid vapor pressure (“RVP”) of gasoline.
16. The 1990 CAA Amendments added section 211(h), 42 U.S.C. § 7545(h), which required the EPA to promulgate regulations prohibiting the sale of gasoline that exceeds certain volatility standards during the high ozone season. 42 U.S.C. § 7545(h).
17. In response to the addition of section 211(h) to the CAA, the EPA amended the volatility regulations at 40 C.F.R. § 80.27 to provide that during the 1992 and later “regulatory control periods” no refiner, importer, distributor, reseller, or carrier shall sell, offer for sale, dispense, supply, offer for supply, transport or introduce into commerce gasoline whose RVP exceeds the applicable standard. 40 C.F.R. § 80.27(a)(2).
18. The term “regulatory control period” is defined as the period from May 1 through September 15 of any calendar year. *Id.*

19. The applicable standard is generally either 7.8 or 9.0 pounds per square inch (psi). See 40 C.F.R. §§ 80.27(a)(2)(i)-(ii). In some areas, federally imposed State Implementation Plans impose more stringent standards.
20. Any person who, after January 12, 2009, through November 2, 2015, violates the regulations prescribed under sections 211(c) or (h) of the CAA, including the gasoline volatility standards at 40 C.F.R. § 80.27(a)(2), is subject to a civil penalty up to \$37,500 per day per violation and the amount of economic benefit or savings resulting from the violation. 42 U.S.C. § 7545(d)(1); 40 C.F.R. § 19.4. Such penalties are assessed in accordance with section 205(b) or (c) of the CAA. 42 U.S.C. § 7545(d)(1).

Stipulated Facts

21. During the 2012 and 2013 regulatory control periods, Alon produced gasoline at its Big Spring Refinery.
22. The gasoline, and its associated RVPs, was reported to the EPA in Alon's RFG0301 Reformulated Gasoline and Anti-Dumping Batch Reports.

Alleged Violations of Law

23. Alon violated 40 C.F.R. § 80.27(a)(2) by introducing into commerce the following six batches of gasoline it produced at its Big Spring Refinery that exceeded the applicable RVP standard of 9.0 psi during the 2012 and 2013 regulatory control periods:
 - (a) 819,042 gallons produced on August 12, 2012, with an RVP of 9.08 psi;
 - (b) 450,786 gallons produced on August 19, 2012, with an RVP of 9.06 psi;
 - (c) 828,282 gallons produced on May 25, 2013, with an RVP of 9.10 psi;
 - (d) 794,514 gallons produced on May 26, 2013, with an RVP of 9.06 psi;
 - (e) 1,251,390 gallons produced on July 16, 2013, with an RVP of 9.07 psi; and

(f) 811,482 gallons produced on July 16, 2013, with an RVP of 9.14 psi.

Terms of Agreement

24. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
admits that the EPA has jurisdiction over this matter as stated above; admits to the
stipulated facts stated above; neither admits nor denies the alleged violations of law
stated above; consents to the assessment of a civil penalty as stated below; waives any
right to contest the alleged violations of law; and waives its rights to appeal the Final
Order accompanying this Consent Agreement.
25. For the purpose of this proceeding, Respondent:
 - (a) Agrees that this Consent Agreement states a claim upon which relief may be
granted against Respondent;
 - (b) Waives any and all remedies, claims for relief and otherwise available rights
to judicial or administrative review that Respondent may have with respect to
any issue of fact or law set forth in this Consent Agreement, including any
right of judicial review under Section 307(b)(1) of the Clean Air Act, 42
U.S.C. § 7607(b)(1);
 - (c) Waives any rights it may possess at law or in equity to challenge the authority
of the EPA to bring a civil action in a United States District Court to enforce
this Consent Agreement or Final Order, or both, and to seek an additional
penalty for such noncompliance, and agrees that federal law shall govern in
any such civil action;

- (d) Consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Columbia;
- (e) Agrees that Respondent may not delegate duties under this Consent Agreement to any other party without the written consent of the EPA, which may be granted or withheld at EPA's unfettered discretion. If the EPA so consents, the Consent Agreement is binding on the party or parties to whom the duties are delegated;
- (f) Acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (g) Acknowledges that this Consent Agreement and attached Final Order will be available to the public and agree that it does not contain any confidential business information or personally identifiable information;
- (h) Acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Consent Agreement (see 31 U.S.C. § 7701);
- (i) Certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and
- (j) Acknowledges that there are significant penalties for knowingly submitting false, fictitious, or fraudulent information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).

26. For purposes of this proceeding, the parties each agree that:

- (a) This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof;
- (b) This Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement;
- (c) Its undersigned representative is fully authorized by the party whom he or she represents to bind that party to this Consent Agreement and to execute it on behalf of that party;
- (d) Each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations under this Consent Agreement and attached Final Order; and
- (e) Each party will bear their own costs and attorney fees in the action resolved by this Consent Agreement and attached Final Order.

27. Respondent agrees to pay to the United States a civil penalty of \$372,611 (the "Civil Penalty").

28. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the issuance of the attached Final Order (i.e., the effective date of this Consent Agreement and attached Final Order).
29. Respondent agrees to pay the Civil Penalty in the manner specified below:
- (a) Pay the Civil Penalty using any method provided on the following website:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>;
 - (b) Identify each and every payment with “Docket No. CAA-HQ-2018-8194”;
and
 - (c) Within 24 hours of payment, email proof of payment to Melissa Schefski at schefski.melissa@epa.gov. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with “Docket No. CAA-HQ-2018-8194”).
30. Respondent agrees that, if the Respondent fails to comply with Paragraph 27 through 29 above, the time period from the date of Respondent’s signature on this Consent Agreement until complete payment of the Civil Penalty (the “Tolling Period”) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the “Tolled Claims”) set forth in Alleged Violations of Law section of this Consent Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the

running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

Effect of Consent Agreement and Attached Final Order

31. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and attached Final Order only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
32. Failure to pay the full amount of the Civil Penalty assessed under this Consent Agreement may subject Respondent to a civil action to collect any unpaid portion of the Civil Penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such Civil Penalty, as described in the following Paragraph of this Consent Agreement, Respondent must timely pay the penalty.
33. If Respondent fails to timely pay any portion of the penalty assessed by the attached Final Order, the EPA may:
 - (a) Request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7524(c)(6);
 - (b) Refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - (c) Collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not

limited to, referral to the Internal Revenue Service for offset against income tax refunds (see 40 C.F.R. Part 13, Subparts C and H); and

(d) Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

34. Penalties paid pursuant to this Consent Agreement are not deductible for federal tax purposes. 26 U.S.C. § 162(f).
35. This Consent Agreement and attached Final Order apply to and are binding upon Complainant and Respondent and any of Respondent's successors or assigns. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.
36. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
37. The EPA reserves the right to revoke this Consent Agreement and accompanying settlement penalty if and to the extent the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was or is materially false or inaccurate, and the EPA in the event of revocation pursuant to this provision reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination,

which will be effective upon mailing. Respondent reserves all defenses to any such actions.

38. The Parties agree to submit this Consent Agreement to the Environmental Appeals Board with a request that it be incorporated into a Final Order.
39. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Environmental Appeals Board and filing with the Hearing Clerk.
40. This Consent Agreement and attached Final Order shall terminate upon Respondent's completion of paragraphs 27-29 of this Consent Agreement and attached Final Order. The provisions of paragraph 31 shall survive the termination of this Consent Agreement and attached Final Order.

The foregoing Consent Agreement In the Matter of Alon USA, LP, Docket No. CAA-HQ-2018-8194, is Hereby Stipulated, Agreed, and Approved for Entry.

For Alon USA, LP
By: Alon USA GP, LLC
Its: General Partner

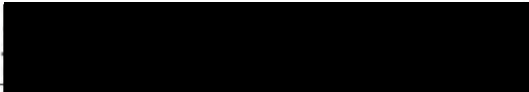
 December 21, 2017
Signature Date

Printed Name: Michael E. Norman

Title: VP – Environmental & Regulatory Affairs

Address: 7102 Commerce Way, Brentwood, TN 37027

 12/28/2017
Signature Date

Printed Name: 


Title: EVP and Chief operating Officer

Address: 7102 Commerce Way, Brentwood, TN 37027

Respondent's Federal Tax Identification Number: 75-2876744

The foregoing Consent Agreement In the Matter of Alon USA, LP, Docket No. CAA-HQ-2018-8194, is Hereby Stipulated, Agreed, and Approved for Entry.

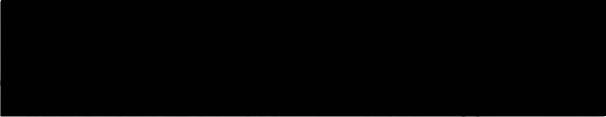
For United States Environmental Protection Agency:



Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue., N.W.
Washington, DC 20460-0001

Date

1/16/2018



Melissa Schefski, Attorney Adviser ✓
Air Enforcement Division, Western Field Office
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202-1129

Date

1/4/18



U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

DJ # 90-5-2-1-11366/1

Thomas P. Carroll
Assistant Chief

thomas.carroll@usdoj.gov
Telephone (202) 514-4051
Facsimile (202) 616-6584

April 24, 2017

By U.S. Mail & E-mail:
Phillip A. Brooks, Director
Air Enforcement Division
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code: 2242A
Washington, DC 20460

Re: Request Pursuant to Section 205(c) of the Clean Air Act for a Waiver of the Penalty Limitation on the EPA's Administrative Penalty Authority in the Matter of Alon USA Energy, Inc.

Dear Phill:

In your letter dated April 4, 2017, you have requested that the Department of Justice waive, pursuant to Clean Air Act Section 205(c)(1), 42 U.S.C. Section 7545(c)(1), the limit on administrative penalty authority of the Environmental Protection Agency ("EPA") for 2012 and 2013 violations of Section 211 of the Clean Air Act, 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80 (the volatility regulations) with respect to violations by Alon USA Energy, Inc. at the Big Spring Refinery in Big Spring, Texas. EPA's target penalty amount for the violations exceeds the applicable limit on penalties it may seek without a waiver from the Department of Justice.

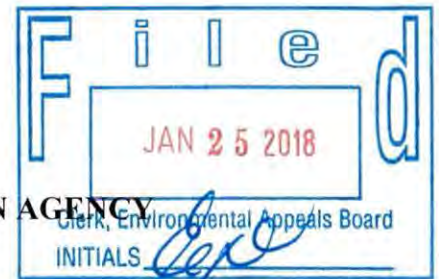
After considering the information that EPA has submitted, DOJ concurs in the waiver of the administrative penalty amount here.

Sincerely,

Thomas P. Carroll
Assistant Chief

cc (by email):
ENRD-EES Case Management
Melissa Schefski, EPA-AED

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:)
)
)

Alon USA, LP)
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_____)

Docket No. CAA-HQ-2018-8194

FINAL ORDER

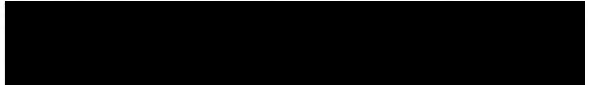
Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.

ENVIRONMENTAL APPEALS BOARD¹

Dated: 1/25/2018


Mary Beth Ward
Environmental Appeals Judge

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Mary Beth Ward.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of Alon USA, LP, Docket No. CAA-HQ-2018-8194, were filed and copies of the same were sent to the following persons in the manner indicated:

**By First Class Certified Mail/
Return Receipt Requested:**

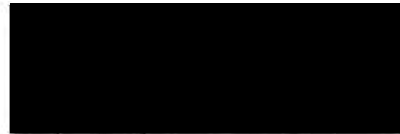
Carrick Brooke-Davidson
Vinson & Elkins LLP
2801 Via Fortuna, Suite 100
Austin, TX 78746-7568

By EPA Pouch Mail:

Melissa Schefski
U.S. Environmental Protection Agency
OECA/AED/Western Field Office
Mail Code 8MSU
1595 Wynkoop Street
Denver, CO 80202-1129

JAN 25 2019

Dated: _____



Annette Duncan
Administrative Specialist