

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

In the Matter of:	)	
Ergon-West Virginia, Inc.	)	Administrative Settlement
Respondent.	)	Agreement
	)	AED/MSEB # 8377
	)	

This Administrative Settlement Agreement (ASA) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Ergon-West Virginia, Inc. (Respondent or Ergon-West Virginia), 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, Subpart H (Tier 2 Gasoline Sulfur regulations) and 40 C.F.R. Part 80, Subpart I (Diesel Fuel Sulfur regulations).

**Purpose:**

1. The purpose of this ASA is to resolve alleged noncompliance by Respondent with the requirements of the CAA and the Tier 2 Gasoline Sulfur regulations and the Diesel Fuel Sulfur regulations:

**Statutory and Regulatory Authority:**

2. The EPA promulgated the Tier 2 Gasoline Sulfur regulations pursuant to section 211(c) of the CAA, 42 U.S.C. § 7545(c), and the Diesel Fuel Sulfur regulations pursuant to sections 211(c) and (i) of the CAA, 42 U.S.C. §§ 7545(c) and (i).

3. The Tier 2 Gasoline Sulfur regulations and the Diesel Fuel Sulfur regulations are part of a comprehensive national program designed to limit the sulfur content of gasoline and diesel fuel in order to reduce emissions from vehicles and nonroad engines.
4. Beginning January 1, 2006, the Tier 2 Gasoline Sulfur regulations established a refinery or importer annual average standard of 30.00 ppm and a per-gallon cap of 80 ppm. 40 C.F.R. § 80.195(a)(1).
5. Beginning in 2004, the Tier 2 Gasoline Sulfur regulations allowed a refiner for any refinery to generate sulfur credits if the annual average sulfur level for gasoline for the averaging period is less than 30.00 ppm. 40 C.F.R. § 80.310(a).
6. The annual average sulfur level must be calculated in accordance with section 80.205, which requires determination of the sulfur content of each batch pursuant to section 80.330. 40 C.F.R. §§ 80.195(b)(2), 80.205(a), 80.310(b).
7. Section 80.330 requires refiners to collect a representative sample from each batch of gasoline produced and test each sample to determine sulfur content for compliance prior to the gasoline leaving the refinery, using the sampling and testing methods provided in: 1) through December 31, 2015, section 80.46(a)(1) or one of the alternative test methods listed in section 80.46(a)(3); and 2) beginning January 1, 2016, an approved method in section 80.47. 40 C.F.R. §§ 80.330(a)(1), (c)(1).
8. Sections 80.46(a)(1) and (a)(3) allowed for use of ASTM D2622, or any of the following provided the refiner test result is correlated with ASTM D2622: ASTM D3120, ASTM D5453, ASTM D6920, or ASTM D7039. 40 C.F.R. §§ 80.46(a)(1), (a)(3).

9. Beginning January 1, 2016, section 80.47 specifies precision and accuracy criteria for approval for the absolute fuel parameter of gasoline sulfur, except that ASTM D2622 is exempt from those criteria if in use prior to October 28, 2013. 40 C.F.R. § 80.47(b).
10. Beginning June 1, 2006, the Diesel Fuel Sulfur regulations established a sulfur content standard of 15 ppm per-gallon. 40 C.F.R. §§ 80.500(a)(1), 80.520(a)(1).
11. Beginning no later than June 1, 2006 for motor vehicle diesel fuel, each refiner must collect a representative sample from each batch produced that is subject to the 15 ppm sulfur content standard and test that sample using an appropriate sampling and testing method, as specified in section 80.580, to determine its sulfur content for compliance prior to the diesel fuel leaving the refinery. 40 C.F.R. §§ 80.581(a), (b).
12. Beginning August 30, 2004, for motor vehicle diesel fuel subject to the 15 ppm sulfur standard set forth at section 80.520(a)(1), sulfur content may be determined using any test method approved under section 80.585. 40 C.F.R. § 80.580(b)(3).
13. Section 80.585 requires that test methods approved by ASTM International meet the accuracy and precision criteria under section 80.584 to be approved as a test method at a facility for determining the sulfur content of diesel fuel. 40 C.F.R. §§ 80.585(a)(1), (a)(2).
14. The CAA provides for civil penalties for any person who violates regulations prescribed under, *inter alia*, section 211(c) of the CAA, 42 U.S.C. § 7545(d)(1).

**Background:**

15. Respondent's Newell Refinery is located at 9995 Ohio River Blvd., Newell, West Virginia 26050, and it has a processing capacity of 23,500 barrels of crude oil per day. Respondent has informed the EPA that it only uses a low sulfur crude and that it consistently produced very low sulfur gasoline and diesel fuel.

16. Respondent informed the EPA that on October 7, 2013, the Newell Refinery's ASTM D2622 instrument failed and was replaced on December 16, 2013 with an ASTM D7220 instrument.
17. Respondent informed the EPA that between failure of the old instrument and installation of the new instrument, Respondent continued certifying and shipping out batches of fuel without first testing the batches for sulfur content to confirm compliance with the Tier 2 Gasoline Sulfur regulations or the Diesel Fuel Sulfur regulations, as applicable.
18. Except as set forth in paragraph 19, below, Respondent tested a retained sample of each batch that was shipped out between failure of the old instrument and installation of the new instrument, and determined that the batches complied with the Tier 2 Gasoline Sulfur regulations or the Diesel Fuel Sulfur regulations, as applicable.
19. For three batches of gasoline shipped out prior to testing sulfur content for compliance with the Tier 2 Gasoline Sulfur regulations, Respondent does not have retained sample test results.
20. Beginning on December 16, 2013, Respondent began using ASTM D7220 to test batches of gasoline for purposes of confirming compliance with, and calculating credits generated under, the Tier 2 Gasoline Sulfur regulations and batches of diesel fuel for purposes of confirming compliance with the Diesel Fuel Sulfur regulations.
21. Respondent provided the EPA with data supporting that it had demonstrated the precision and accuracy criteria for approval for the absolute fuel parameter of gasoline sulfur using ASTM D7220, as set forth in 40 C.F.R. § 80.47(b), as of March 28, 2016.

22. Respondent provided the EPA with data supporting that it had demonstrated the precision and accuracy criteria for approval for determining the sulfur content of motor vehicle diesel fuel using ASTM D7220, as set forth in 40 C.F.R. § 80.584, as of March 28, 2016.
23. Based upon the information Respondent provided, the EPA alleges that between October 7, 2013, and December 16, 2013, Respondent violated 40 C.F.R. § 80.330(a)(1) and 40 C.F.R. § 80.581(b) by failing to test a representative sample of each batch of gasoline and diesel fuel for compliance with the applicable sulfur content standard prior to the fuel leaving the Newell Refinery.
24. Based upon the information Respondent provided, the EPA alleges that between December 16, 2013, and March 28, 2016, Respondent violated 40 C.F.R. § 80.330(c)(1) and 40 C.F.R. § 80.580(b)(3) by failing to use a permissible test method to measure the sulfur content of the gasoline and diesel fuel it produced at the Newell Refinery.
25. The EPA and the Respondent (the Parties), desiring to settle and resolve this matter, in consideration of the mutual covenants and agreements contained herein, which consideration is acknowledged by the Parties to be adequate, agree as set forth herein.

**Terms of the Agreement and Civil Penalty:**

26. In any enforcement or penalty action arising out of this ASA or the subject matter of this ASA:
  - a. The Parties agree that the settlement of this matter is in the public interest and that this ASA is the most appropriate means of resolving the matter; and
  - b. The Parties further agree that jurisdiction to settle this matter exists pursuant to section 211 of the Act, 42 U.S.C. § 7545, 40 C.F.R. Part 80, and other provisions of law.
27. Respondent agrees to enter the necessary number of remedial action transactions, with retire reason code 140 (Invalid Credit), in the EPA Moderated Transaction System

(EMTS) to adjust its 2015 gasoline sulfur credit balance for the Newell Refinery to 1,764,149,814 credits, and its 2016 gasoline sulfur credit balance for the Newell Refinery to 2,429,126,070 credits, within 30 days of the effective date of this ASA. Respondent agrees to include "AED/MSEB # 8377" in the Transaction Comment section for each remedial action transaction. Respondent agrees to submit its 2017 GSF0100 Gasoline Sulfur Credit Banking and Allotment Generation Report, and 2017 GSF0301 Gasoline Sulfur Facility Summary Report, with information reflecting the completed adjustments in EMTS, in accordance with this Paragraph, of 2015 and 2016 Newell Refinery gasoline sulfur credit balances. Respondent agrees never to use, bank, or transfer to another refinery or importer within the company, or to another refiner or importer outside of the company, any 2015 or 2016 Newell Refinery gasoline sulfur credits beyond the above-stated credit balances.

28. Respondent agrees to submit a written notification to the EPA within five days of making the adjustments specified in Paragraph 27. The notification should include the following information: (1) a description of the remedial action transactions (including the EMTS transaction IDs), and how each complied with Paragraph 27; and (2) the contact name, phone number, title, and signature (scanned version to the email address below with original hardcopy mailed to the address below) of a responsible official certifying that Respondent had not used or transferred any 2015 or 2016 Newell Refinery gasoline sulfur credits prior to performing the adjustments specified in Paragraph 27. Respondent should send this notification to [support@epamts-support.com](mailto:support@epamts-support.com) and the following address:

United States Environmental Protection Agency  
Attn: Air Enforcement Division Director  
1200 Pennsylvania Avenue, NW, Mail Code – 2242A  
Washington, DC 20460

29. Respondent agrees to pay a civil penalty of \$235,000 to the United States of America within thirty (30) calendar days of the effective date of this ASA (penalty due date), but not before the effective date. Late payment of the penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay the amount by either:

- a. Certified check or cashier's check payable to the "United States of America," and mailed via the United States Postal Service to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
ATTN: AED/MSEB # 8377

Simultaneously, a scanned copy of the check shall be e-mailed to Virginia Sorrell at [sorrell.virginia@epa.gov](mailto:sorrell.virginia@epa.gov). This check shall be identified with the case number and Respondent's name; or

- b. Respondent may make an online payment through the Department of the Treasury by visiting [WWW.PAY.GOV](http://WWW.PAY.GOV). In the "Search Public Forms" field, enter "SFO 1.1", click "EPA Miscellaneous Payments - Cincinnati Finance Center" and complete the "SFO Form Number 1.1." Within twenty-four hours of payment, Respondent shall e-mail a scanned copy of the online payment receipt to Virginia Sorrell at [sorrell.virginia@epa.gov](mailto:sorrell.virginia@epa.gov).

**Stipulated Penalties:**

30. Respondent shall pay stipulated penalties of \$1,000 per day for failure to timely pay the penalty, or provide proof thereof, pursuant to Paragraph 29.

**General Provisions:**

31. This ASA becomes effective upon the date executed by the EPA (effective date of the ASA), at which time a copy will be returned to Respondent.

32. Notwithstanding any other provision of this ASA, upon default or failure of Respondent to comply with the terms of this ASA, the EPA may refer this matter to the United States

Attorney General for collection pursuant to CAA section 205(c), 42 U.S.C. § 7524(c), commence an action to enforce this ASA or to recover the civil penalty pursuant to CAA section 205, 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 ASA. *See* 31 U.S.C. § 7701.

33. The Parties represent that the individual or individuals executing this ASA 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.
34. 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.
35. The validity, enforceability, and construction of all matters pertaining to this ASA shall be determined in accordance with applicable federal law.
36. This ASA is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to the EPA relating to its compliance with the Tier 2 Gasoline Sulfur regulations and the Diesel Fuel Sulfur regulations.

**Effect of ASA:**

37. Upon completion of the terms of this ASA, the alleged violations described shall be deemed terminated and resolved. Nothing herein shall limit the right of the EPA to proceed against Respondent in the event of default or noncompliance with this ASA, for violations of CAA section 211, 42 U.S.C. § 7545, which are not the subject matter of this




ASA, for other violations of law, or with respect to other matters not within the scope of the ASA. This ASA 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 Ergon-West Virginia, Inc.  
AED/MSEB # 8377*

The following agree to the terms of this ASA:

**Ergon-West Virginia, Inc.**

By:  Date: 11/07/2017

Typed or Printed Name: Neil Stanton

Typed or Printed Title: Vice President - Refining

Federal Tax Identification Number: 72-1375114

*Administrative Settlement Agreement – In the Matter of Ergon-West Virginia, Inc.  
AED/MSEB # 8377*

United States Environmental Protection Agency

By: 

Phillip A. Brooks, Director  
Air Enforcement Division  
Office of Civil Enforcement

Date: 11/27/2017