

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

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U.S. EPA, HEADQUARTERS

AUG 8 2018

In the Matter of:

Colonial Oil Industries, Inc.

Respondent.

ENVIRONMENTAL APPEALS BOARD  
Docket No.  
CAA-HQ-2018-8384

**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. sections 7524(c)(1) and 7545(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. section 7524(c)(1).
3. Respondent in this matter is Colonial Oil Industries, Inc. (“Colonial Oil”). Respondent is a corporation organized under the laws of the State of Georgia with its corporate headquarters located at 101 North Lathrop Avenue, Savannah, Georgia 31415. Respondent also maintains an office at Three Riverway, Suite 2000, Houston, Texas

77056. Respondent is an importer of gasoline and a refiner that produces gasoline through blending operations.

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. sections 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. For violations occurring after January 12, 2009, through December 6, 2013, the EPA may administratively assess a civil penalty if the penalty sought does not exceed \$295,000. 42 U.S.C. §§ 7524(c)(1), 7545(d)(1); 40 C.F.R. § 19.4. This amount increases to \$320,000 for violations occurring after December 6, 2013, through November 2, 2015.  
*Id.*
7. 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.
8. 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**

9. This proceeding arises under Part A of Title II of the CAA, CAA sections 202-219, 42 U.S.C. sections 7521–7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution by, among 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. The Alleged Violations of Law, stated below, regard requirements aimed at reducing volatile organic compound (“VOC”) emissions from gasoline, as well as fuel reporting requirements. What follows is a summary of the law that governs these allegations.

10. Definitions:

- (a) “Batch of gasoline” means a quantity of gasoline that is homogeneous with regard to those properties that are specified for conventional or reformulated gasoline. 40 C.F.R. § 80.2(gg).
- (b) “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. *Id.* § 80.2(c).
- (c) “Importer” means a person who imports gasoline, gasoline blending stocks or components, or diesel fuel from a foreign country into the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands). *Id.* § 80.2(r).

(d) “Refiner” means any person who owns, leases, operates, controls, or supervises a refinery. *Id.* § 80.2(i).

(e) “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. *Id.* § 80.2(h).

11. Section 211 of the CAA, 42 U.S.C. section 7545, contains numerous provisions to ensure that only compliant fuels and fuel additives are produced and distributed in the United States.

9.0 Reid Vapor Pressure (RVP) Standard

12. Section 211(h) of the CAA, 42 U.S.C. section 7545(h), required the EPA to promulgate regulations making it unlawful for any person during the high ozone season to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP in excess of 9.0 pounds per square inch (psi).
13. Under section 211(c)(1) of the CAA, 42 U.S.C. section 7545(c)(1), the EPA may adopt a fuel control if: 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.
14. Pursuant to its authority under sections 211(c)(1) and 211(h) of the CAA, 42 U.S.C. sections 7545(c)(1) and 7545(h), the EPA promulgated regulations at 40 C.F.R. Part 80, Subpart B (Controls and Prohibitions), that include requirements for controls and

prohibitions on gasoline volatility. *See* 40 C.F.R. § 80.27; 56 Fed. Reg. 64704 (Dec. 12, 1991).

15. From May 1 to September 15, gasoline sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce by a refiner or importer in designated attainment areas is required to meet an RVP standard of 9.0 psi or less. *See* 40 C.F.R. § 80.27(a)(2)(i).
16. Gasoline introduced into commerce with at least 9% and no more than 10% ethanol by volume may exceed the applicable RVP standard by up to 1.0 psi. *Id.* § 80.27(d).

#### Gasoline Benzene Reporting Requirements

17. Section 202(l)(2) of the CAA, 42 U.S.C. section 7521(l)(2), further provides that EPA shall promulgate, and from time to time revise, regulations containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels, to include emissions of benzene.
18. Pursuant to its authority under sections 202(l)(2) and 211(c)(1) of the CAA, 42 U.S.C. sections 7521(l)(2) and 7545(c)(1), the EPA promulgated regulations at 40 C.F.R. Part 80, Subpart L (gasoline benzene), that require refiners to limit the amount of benzene contained in gasoline they produce or import. *See* 72 Fed. Reg. 8428 (Feb. 26, 2007).
19. The gasoline benzene regulations require, *inter alia*, each refinery to meet an annual average benzene standard of 0.62 volume percent. 40 C.F.R. § 80.1230(a)(1).  
Compliance with this annual average benzene standard may be achieved through use of benzene credits. *Id.* § 80.1295(a)(1).
20. The gasoline benzene regulations contain reporting requirements, including a requirement for refiners to submit an Annual Gasoline Benzene Report for each of its refineries. *Id.*

§ 80.1354(a). This report must include specific information, including the number of benzene credits transferred to the refinery during that year. *Id.* § 80.1354(b)(7).

Conventional Gasoline Batch Reporting Requirements

21. Section 211(k)(8) of the CAA, 42 U.S.C. section 7545(k)(8), required the EPA to promulgate regulations establishing requirements for “conventional gasoline” (gasoline not subject to the requirements for “reformulated gasoline”) to ensure that it did not become more polluting than it was in 1990. These requirements ensure that refiners and importers do not “dump” fuel components that are restricted in reformulated gasoline, and that cause environmentally harmful emissions, into conventional gasoline.
22. Section 301(a)(1) of the CAA, 42 U.S.C. section 7601(a)(1), provides the EPA with authority to prescribe regulations as necessary to carry out functions under the CAA.
23. Section 114(a) of the CAA, 42 U.S.C. section 7414(a), provides the EPA with broad authority to require recordkeeping, reporting, monitoring, sampling, and submission of compliance certifications.
24. Pursuant to its authority under sections 114(a), 211(c)(1), 211(k)(1)(A), and 301(a)(1) of the CAA, 42 U.S.C. sections 7414(a), 7545(c)(1), 7545(k)(1)(A), and 7601(a)(1), the EPA established regulations at 40 C.F.R. Part 80, Subpart E (anti-dumping), that require refiners and importers to meet certain conventional gasoline compliance standards on an annual average basis. *See* 59 Fed. Reg. 7716, 7811 (Feb. 16, 1994).
25. The anti-dumping regulations require, *inter alia*, refiners and importers to submit annual reports with information regarding each batch of conventional gasoline produced and included in each refinery and importer’s conventional gasoline compliance calculations,

including the batch number, date of production, batch volume, grade of gasoline produced, etc. 40 C.F.R. § 80.105(a)(5).

Penalties and Enforcement

26. Any person who, after January 12, 2009, through November 2, 2015, violates the regulations prescribed under sections 211(c), (h), or (k) of the CAA, 42 U.S.C. sections 7545(c), (h), or (k), the controls and prohibitions on gasoline volatility at 40 C.F.R. Part 80, Subpart B, the gasoline benzene regulations at 40 C.F.R. Part 80, Subpart L, or the anti-dumping regulations at 40 C.F.R. Part 80, Subpart E, 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. *See* 42 U.S.C. § 7545(d)(1); 40 C.F.R. § 19.4. Such penalties are assessed in accordance with sections 205(b) and (c) of the CAA, 42 U.S.C. sections 7524(b) and (c). 42 U.S.C. § 7545(d)(1).

**Stipulated Facts**

27. Colonial Oil is a refiner and uses third-party bulk liquid storage terminal facilities as refineries by blending various components to produce gasoline. Colonial Oil has produced gasoline at the Colonial Terminals facility in Savannah, Georgia (Savannah Refinery), the NuStar Energy facility in Jacksonville, Florida (Jacksonville Refinery), and the Allied Terminals facility in Charleston, South Carolina (Charleston Refinery). Colonial Oil is also an importer and has imported conventional gasoline into Petroleum Administration for Defense District I (PADD I).
28. On July 23, 2013, Colonial Oil produced a batch of conventional gasoline containing at least 9% and no more than 10% ethanol by volume at its Jacksonville Refinery with an RVP of 10.08 psi. On September 12, 2013, approximately 315,000 gallons of that batch

were transferred to a rack tank and sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce in a designated attainment area.

29. On February 28, 2014, Colonial Oil submitted a 2013 Annual Gasoline Benzene Report for its Savannah Refinery that erroneously stated that Colonial Oil had purchased benzene credits for that refinery during that year; in fact, the credit purchases and transfers occurred, and were also reported, for the previous year.
30. On February 28, 2014, Colonial Oil submitted conventional gasoline batch data as part of its annual report that included information for its Jacksonville Refinery, its Charleston Refinery, and its PADD 1 import activities. One batch produced at the Jacksonville Refinery (Batch 33) was actually a butane batch that was incorrectly designated as a conventional gasoline batch and volumes were incorrectly reported for one PADD 1 batch (Batch 15), one Jacksonville Refinery batch (Batch 990020), and one Charleston Refinery batch (Batch 990004).

#### **Alleged Violations of Law**

31. By producing and transferring for sale a batch of gasoline with an RVP of 10.08 psi on September 12, 2013, Colonial Oil violated the requirements at 40 C.F.R. sections 80.27(a)(2)(i) and (d) that batches of gasoline with an ethanol content of at least 9% and no more than 10% by volume introduced into commerce by a refiner or importer from May 1 to September 15 meet an RVP value of 9.0 psi, plus an additional 1.0 psi, or less in designated attainment areas.
32. Colonial Oil violated the reporting requirements at 40 C.F.R. section 80.1354(b)(7) by submitting a 2013 Annual Gasoline Benzene Report that erroneously double-reported benzene credit purchases from the previous year.



33. Colonial Oil violated the reporting requirements at 40 C.F.R. section 80.105(a)(5) by reporting incorrect conventional gasoline batch data for four batches.

**Terms of Agreement**

34. For the purpose of this proceeding, as required by 40 C.F.R. section 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; consents to any conditions specified in this Consent Agreement; waives any right to contest the alleged violations of law; and waives its rights to appeal the Final Order accompanying this Consent Agreement.
35. For the purpose of this proceeding, Respondent:
- (a) agrees that this 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. section 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 Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law will govern in any such civil action;

- (d) consents to personal jurisdiction in any action to enforce this Agreement or 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 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 agrees 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 Agreement (see 31 U.S.C. section 7701);
- (i) certifies the information it has supplied concerning this matter was at the time of submission, to the best of its knowledge, true, accurate, and complete; and
- (j) acknowledges there are significant penalties for knowingly submitting false, fictitious, or fraudulent information, including the possibility of fines and imprisonment (see 18 U.S.C. section 1001).

36. 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.
37. Respondent agrees to pay to the United States a civil penalty of \$210,000 (the Civil Penalty).

38. 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).
39. 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-2018-8384”; and
  - (c) Within 24 hours of payment, email proof of payment to Virginia Sorrell at [sorrell.virginia@epa.gov](mailto:sorrell.virginia@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-2018-8384”).
40. As a condition of settlement, Respondent agrees to the following: Respondent will be liable for stipulated penalties to the EPA for failure to pay the Civil Penalty, or any portion thereof, when due, or provide proof of such payment: \$1,000 per day for each day during the first 15 days, and \$2,000 per day thereafter. All stipulated penalties must be paid in the manner specified in Paragraph 39 of this Agreement.
41. Respondent agrees that the time period from the date of Respondent’s signature on this Consent Agreement until the payment of the Civil Penalty as stated in Paragraphs 37 through 39 (the “Tolling Period”) will 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 will 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 Tolloed Claims.

**Effect of Consent Agreement and Attached Final Order**

42. In accordance with 40 C.F.R. section 22.18(c), Respondent's full compliance with this Consent Agreement will only resolve Respondent's liability for federal civil penalties alleged above.
43. 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 proposed 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 civil penalty.
44. If Respondent fails to timely pay any portion of the civil 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. section 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. section 7524(c)(6);
  - (b) refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. sections 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 (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. section 13.17.
45. Penalties paid pursuant to this Consent Agreement are not deductible for federal tax purposes. 28 U.S.C. § 162(f).
46. This Consent Agreement and attached Final Order apply to and are binding upon the Complainant and the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent. 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.
47. Nothing in this Consent Agreement relieves Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, or restricts the EPA's authority to seek compliance with any applicable laws or regulations, nor will it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
48. 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 reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA will give Respondent written notice of such termination, which will be effective upon mailing.

49. The Parties agree to submit this Consent Agreement to the Environmental Appeals Board with a request that it be incorporated into a Final Order.
50. 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 will become effective after execution of the Final Order by the Environmental Appeals Board and filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of Colonial Oil Industries, Inc., Docket No. CAA-HQ-2018-8384, is Hereby Stipulated, Agreed, and Approved for Entry.

For Colonial Oil Industries, Inc.:



Signature

July, 18 2018  
Date

Printed Name:



Title:

V. P. SUPPLY + TRADING

Address:

3 RIVERWAY SUITE 2000 HOUSTON, TX 77056

Respondent's Federal Tax Identification Number:





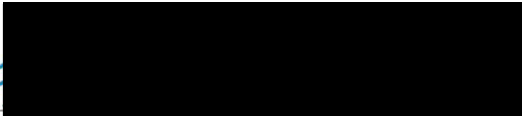
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**For Complainant:**



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

7/30/2018  
Date



Virginia Sorrell, Attorney Adviser  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1595 Wynkoop St.  
Denver, CO 80202-1129

7-30-18  
Date