

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

In the Matter of:)
)
Colonial Oil Industries, Inc.)
)
Respondent.)
)

SETTLEMENT AGREEMENT
AED/MSEB No. 7116

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Colonial Oil Industries, Inc. (Colonial), which is headquartered at 101 East Lanthrop Avenue, Savannah, Georgia (Respondent).

Preliminary Statement

1. On July 22, 2005, EPA issued a Notice of Violation File No. AED/MSED 7116 (NOV) to Respondent alleging that Respondent violated Section 211 of the Clean Air Act (CAA), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80 (Fuels Regulations). The Fuels Regulations require refiners to satisfy various requirements, including gasoline emission standards, testing and reporting requirements.
2. 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.
3. By entering into this Agreement, Respondent does not admit that it is responsible for the alleged violations or that any violations have occurred.
4. The parties stipulate and agree to the matters identified in this Paragraph. It is further agreed that these stipulations are applicable to this settlement agreement (Agreement) and any

enforcement or penalty arising out of this Agreement or the subject matter of this Agreement:

a. The parties agree that the settlement of this matter is in the public interest and that this Agreement is the most appropriate means of resolving the matter;

b. Jurisdiction to settle this matter exists pursuant to Section 211 of the CAA, 42 U.S.C. § 7545, 40 C.F.R. Part 80 and other provisions of law;

c. At all relevant times, Respondent was a refiner within the meaning of 40 C.F.R. § 80.2(i).

d. EPA alleged in the NOV that Respondent violated:
i. 40 C.F.R. § 80.105 where Colonial incorrectly reported properties of various batches including: 5177-00001-01-000017; 5177-00001-01-000032; 5177-00001-01-000011; 5177-00001-01-000007; and 5177-00001-01-000009.

ii. Section 211(f)(1)(A) of the Act where Colonial certified 45 batches with oxygen content exceeding the maximum oxygen content of 2.7 weight percent (wt. %) allowed, as identified in the NOV.

iii. 40 C.F.R. § 80.101(i) and § 80.2(gg) where Colonial failed to test several batches for homogeneity including: 5177-08406-02-000034, 5177-08406-02-000036, and 5177-20380-02-000039.

iv. 40 C.F.R. § 80.101(g)(9) and § 80.105 where Colonial failed to exclude previously certified gasoline (PCG) or blendstock from newly certified batches of gasoline in the following instances:

1. Batch No.: 5177-08406-01-000004
2. Batch No.: 5177-08406-01-000013
3. Batch No.: 5177-08406-01-000036
4. Batch No.: 5177-08406-01-000044
5. Batch No.: 5177-08406-01-000046

- 6. Batch No.: 5177-08406-01-000048
- 7. Batch No.: 5177-08406-01-000053
- 8. Batch No.: 5177-08406-01-000012

v. 40 C.F.R. § 80.27(a)(2)(i) by selling, offering to sell, supplying or introducing into commerce gasoline with an RVP that exceeded the applicable 9.0 psi volatility standard in the following instances:

Date	Tank/Vessel	Batch	Volume, gal.	Original RVP	Corrected RVP
6/11/04	38	54	2,363,508	8.96	9.07
9/07/04	38	97	2,589,342	8.95	9.06
9/09/04	37	100	38,724	8.95	9.06
8/01/04	Tintomara		3,727,332	8.97	9.08
8/31/04	Zadar		3,628,884	9.00	9.11
9/01/04	Guld Falk		6,332,088	8.97	9.08

vi. 40 C.F.R. § 80.101(i) and § 80.2(gg) when Colonial's batch in Tank 46 on July 25, 2003, was incorrectly determined to be homogeneous, but where the laboratory misreported the API gravity test.

e. Subsequent to the NOV, Colonial provided EPA with new information to show that Colonial introduced into commerce 1,549,590 gallons of gasoline with an RVP that exceeded 9.0 psi in violation of 40 C.F.R. § 80.27(a)(2)(i), not the 18,679,878 gallons of gasoline

originally disclosed by Colonial.¹

Compliance Assurance

5. Respondent has corrected its practices to address the conditions that created the alleged violations and to prevent their future occurrence.
6. No later than 30 days after the effective date of this Agreement, Colonial shall retain a contractor(s) with expertise in EPA's gasoline fuel regulations to perform four audits of Colonial's gasoline fuel regulatory program to ensure its compliance with EPA's regulations at 40 C.F.R. Part 80.
7. Within 60 days after the effective date of this Agreement, Colonial's contractor shall complete an initial company-wide audit of Colonial's compliance with the gasoline fuel regulations, and Colonial's contractor will complete subsequent annual company-wide audits within 12 months of the effective date of this Agreement and annually for three years thereafter.
8. Each audit shall include, at a minimum, a review of the following Colonial activities: importation and blending practices, including but not limited to,
 - a. Colonial's accounting practices for Previously Certified Gasoline and Gasoline Treated as Blendstock (GTAB);
 - b. its sampling and testing practices for Reid Vapor Pressure, aromatics, olefins, sulfur, E200, E300 and benzene parameters;

¹On December 20, 2004, Colonial disclosed to EPA that it had introduced into commerce gasoline on six occasions with an RVP in excess of the 9.0 psi regulatory limit. The violation occurred when Colonial's inspector used a Grabner analyzer that was improperly calibrated. Upon further investigation, Colonial discovered that most of the noncompliant gasoline did not leave its facility until after the end of the VOC season. Letter from Peter H. Rodgers, Sutherland Asbill & Brennan, to Leslie A. Kirby Miles, U.S. EPA, pp. 9-10 (October 11, 2005).

- c. its practices for ensuring its gasoline is within the legal requirements for oxygenate content; and
 - d. Colonial's practices for complying with its EPA recordkeeping and reporting obligations.
9. Within 30 days of completion of the on-site portion of each audit, Respondent shall direct the Contractor to develop and submit an Audit Report concurrently to Respondent and EPA. The Audit Report shall present the audit findings and shall, at a minimum, contain the following information:
- a. Audit scope, including the period of time covered by the audit;
 - b. A summary of the audit process, including any obstacles encountered;
 - c. Detailed audit findings, including the basis for each finding and each area of concern identified;
 - d. Identification of any audit findings corrected or areas of concern addressed during the audit, and a description of the corrective measures and when they were implemented; and
 - e. Certification by the Contractor Auditor that the audit was conducted in accordance with the provisions of this Agreement.
10. *Follow-Up Corrective Measures.* Within 60 days of receiving each Audit Report, Respondent shall certify in writing to EPA that the audit findings and areas of concern have been addressed; shall specify all corrective actions that Colonial has taken to address the Audit Report findings and areas of concern; shall certify whether Colonial is in compliance with EPA's gasoline fuel regulations; and to the extent Colonial can not certify compliance with the regulations, Colonial will explain why it can not certify to compliance.
11. *Training.* To the extent that Colonial is unable to hire an Environmental Compliance

Manager within six (6) months of the effective date of this Agreement, Colonial will retain a contractor(s) with expertise in EPA's gasoline fuel regulations to conduct a training program for Colonial employees, officers and contractors with gasoline fuel regulatory program responsibilities, including Respondent's environmental compliance personnel, traders and operation schedulers. The first training will be completed no later than January 31, 2007, and will continue every six months thereafter until Colonial has hired its Environmental Compliance Manager.

Civil Penalty

12. Under this Agreement, Respondent agrees to pay a civil penalty of \$110,000 to the United States of America within thirty days from the effective date of this Agreement. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. The civil penalty shall be paid by check made payable to the "United States of America," and the payment shall be mailed to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn.: AED/MSEB - 7116

A photocopy of the check shall be mailed simultaneously to:

Leslie A. Kirby-Miles, Attorney
U.S. Environmental Protection Agency
OCE - Air Enforcement Division
1200 Pennsylvania Ave. NW
Mail Code: 2242A
Washington, DC 20460

13. Time is of the essence to this Agreement. Respondent agrees to pay stipulated penalties of \$1,000 per day for failure to timely pay the penalty, or provide proof thereof, pursuant to Paragraph 12.

14. Respondent agrees to pay stipulated penalties of \$1,000 per day for failure to retain a contractor pursuant to Paragraph 6 in a timely manner.

15. Respondent agrees to pay stipulated penalties of \$500 per day for failure of its contractor to complete any audit required pursuant to paragraphs 7 & 8.

16. Respondent agrees to pay stipulated penalties of \$500 per day for failure of its contractor to submit any required Audit Report pursuant to paragraph 9.

17. Respondent agrees to pay stipulated penalties of \$1,000 per day for failure to take required corrective actions and certify those actions pursuant to paragraph 10 in a timely manner.

18. Respondent agrees to pay stipulated penalties of \$1,000 per day for failure to retain a contractor, to the extent required, pursuant to Paragraph 11 in a timely manner.

19. Respondent agrees to pay stipulated penalties of \$500 per day for failure of its contractor to conduct the requisite training programs pursuant to Paragraph 11 in a timely manner.

20. The parties further agree that upon default or failure to comply with the provisions of this Agreement, EPA may refer this matter to the United States Attorney General for collection pursuant to Section 211(d) of the CAA, 42 U.S.C. § 7545(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 211 of the CAA; or pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the allegations set forth herein, and Respondent expressly waives its right to assert that any action based upon the allegations set

forth herein is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.

21. This Agreement becomes effective upon the date signed by the EPA, after which time a copy will be forwarded to the Respondent.

22. Each party hereby represents to the other that the individuals executing this Agreement on behalf of the party are authorized to do so and that such execution is intended and is sufficient to bind the party and, as applicable, its officers, agents, directors, owners, heirs, assigns, and successors.

23. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to matters agreed to herein.

24. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

25. The validity, enforceability and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable Federal law.

26. The effect of the settlement described in this Agreement, is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.

27. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved. The scope of this Agreement consists of the violations alleged in the NOV.

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 Section 211 of the CAA, 42 U.S.C. § 7545, which are not the subject matter of this Agreement; or for other violations of law; or with respect to other matters not within the scope of the Agreement.

28. This Agreement in no way affects, or relieves Respondent of responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

Colonial Oil Industries, Inc.

By: SMcNear

Date: 7/28/06


Name: Steven M. McNear

Title: Executive Vice President

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Administrative Settlement Agreement
In the Matter of: Amerada Hess Corporation
AED/MSEB # 7116

United States Environmental Protection Agency

By: 

Adam M. Kushner
Director
Air Enforcement Division
Office of Civil Enforcement

Date: 