

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

In re:)	
)	
)	Docket No. CAA-HQ-2020-8398
Penn Tank Lines, Inc.)	
)	
)	
)	

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.¹

ENVIRONMENTAL APPEALS BOARD

Dated: Feb 25 2020



 Aaron P. Avila
 Environmental Appeals Judge

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

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of Penn Tank Lines, Inc., Docket No. CAA-HQ-2020-8398, were sent to the following persons in the manner indicated:

By E-mail:

Stephen McSherry
Penn Lines Tank, Inc.
300 Lionville Station Road
Chester Springs, PA 19425

smcsherry@penntanklines.com

Timothy J. Sullivan
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street
Mail Code 8MSU
Denver, CO 80202-1129

Sullivan.tim@epa.gov

Dated: **Feb 25 2020**



Eurika Durr
Clerk of the Board

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

IN THE MATTER OF:

PENN TANK LINES, INC.

Respondent.

Docket No. CAA-HQ-2020-8398

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This is a civil administrative penalty assessment proceeding initiated under Sections 205(c)(1) and 211(d)(1) of the Clean Air Act (Act), 42 U.S.C. §§ 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) and 22.18(b)(2) and (3).
2. The Complainant in this matter is the United States Environmental Protection Agency (EPA). The authority to sign consent agreements memorializing settlements between the EPA and respondents under Section 205(c) of the Act, 42 U.S.C. 7524(c), has been delegated to the Assistant Administrator of the Office of Enforcement and Compliance Assurance. This authority has been redelegated to the Director of the Office of Civil Enforcement, who further redelegated the authority to the Director of the Air Enforcement Division. EPA Delegation 7-6-A.
3. The Respondent in this matter is Penn Tank Lines, Inc. (Penn Tank Lines). Respondent is a corporation organized under the laws of the State of Delaware with its corporate

headquarters located at 300 Lionville Station Road, Chester Springs, Pennsylvania, 19425. Respondent provides trucking transportation services for petroleum products.

4. The Complainant and Respondent (collectively, the Parties), having agreed to settle this action, consent to the issuance of the attached Final Order ratifying this Consent Agreement 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.

II. JURISDICTION

5. This Consent Agreement is entered into under Sections 205(c)(1) and 211(d)(1) of the Act, 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* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
6. For violations occurring after November 2, 2015, where penalties are assessed on or after January 15, 2019, the EPA may administratively assess a civil penalty if the penalty sought does not exceed \$378,852. 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 19.4.
7. The Environmental Appeals Board is authorized to ratify this Consent Agreement memorializing the settlement between the Parties in a Final Order. 40 C.F.R. §§ 22.4(a)(1) and 22.18(b); 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)(2) and (3).

III. GOVERNING LAW

9. This proceeding arises under Part A of Title II of the Act, Sections 202-219, 42 U.S.C. §§ 7521–7554, and its implementing regulations (40 C.F.R. Part 80). The Act and its implementing regulations 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, relate to requirements aimed at reducing emissions of volatile organic compounds (VOCs). A summary of the law and regulations that govern these allegations follows below.
10. 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) “Retail outlet” means any establishment at which gasoline, diesel fuel, methanol, natural gas or liquified petroleum gas is sold or offered for sale for use in motor vehicles or nonroad engines, including locomotive engines or marine engines. 40 C.F.R. § 80.2(j).
 - (c) “Retailer” means any person who owns, leases, operates, controls, or supervises a retail outlet. 40 C.F.R. § 80.2(k).
 - (d) “Distributor” means any person who transports or stores or causes the transportation or storage of gasoline or diesel fuel at any point between any

gasoline or diesel fuel refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility. 40 C.F.R. § 80.2(l).

- (e) "Carrier" means any distributor who transports or stores or causes the transportation or storage of gasoline or diesel fuel without taking title to or otherwise having any ownership of the gasoline or diesel fuel, and without altering either the quality or quantity of the gasoline or diesel fuel. 40 C.F.R. § 80.2(t).
- (f) "Reformulated gasoline" means any gasoline whose formulation has been certified under § 80.40, and which meets each of the standards and requirements prescribed under § 80.41. 40 C.F.R. § 80.2(ee).
- (g) "Conventional gasoline" means any gasoline which has not been certified under § 80.40. 40 C.F.R. § 80.2(ff).
- (h) "Covered area" means each of the geographic regions specified in § 80.70 in which only reformulated gasoline may be sold or dispensed to ultimate consumers. 40 C.F.R. § 80.2(hh).

11. Section 211 of the Act, 42 U.S.C. § 7545, and its implementing regulations contain numerous provisions to ensure that only compliant fuels are produced and distributed in the United States.
12. Under Section 211(c)(1) of the Act, 42 U.S.C. § 7545(c)(1), the EPA may adopt a regulation to control the sale of any fuel for use in a motor vehicle if a fuel causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare.

13. Under Section 211(k)(1) of the Act, 42 U.S.C. § 7545(k)(1), the EPA is directed to promulgate regulations that establish requirements for reformulated gasoline to be used in gasoline-fueled vehicles in specified nonattainment areas.
14. Pursuant to its authority under Sections 211(c)(1) and 211(k)(1) of the Act, 42 U.S.C. §§ 7545(c)(1) and 7545(k)(1), the EPA promulgated regulations at 40 C.F.R. Part 80, Subpart D (Reformulated Gasoline), to control the manufacture, sale, and distribution of reformulated gasoline in VOC Control Regions. *See* 40 C.F.R. §§ 80.40 – 80.89; 59 Fed. Reg. 7,716 (Feb. 16, 1994).
15. The regulation found at 40 C.F.R. § 80.78(a)(1)(v)(A) provides that during the period of June 1 through September 15, no person may manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline represented as reformulated and intended for sale or use in any covered area unless each gallon of such gasoline is VOC-controlled for the proper VOC Control Region.
16. The regulation found at 40 C.F.R. § 80.79(a)(4) provides that where the gasoline contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any retailer is found in violation of the prohibitions described in 40 C.F.R. § 80.78(a), each carrier who supplied or transported any gasoline which is in the storage tank containing gasoline found to be in violation is deemed liable, provided that the EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that the carrier caused the violation.
17. Any person who violates the regulations prescribed under Section 211(k) of the Act, 42 U.S.C. § 7545(k), after November 2, 2015, where penalties are assessed on or after

January 15, 2019, is subject to a civil penalty up to \$47,357 per day per violation and the amount of economic benefit or savings resulting from the violation. *See* 42 U.S.C. § 7545(d)(1); *see also* 40 C.F.R. §§ 19.4, 80.5, and 80.79. Such penalties are assessed in accordance with Sections 205(c) and 211(d)(1) of the Act, 42 U.S.C. §§ 7524(c) and 7545(d)(1).

IV. STIPULATED FACTS

18. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
19. Respondent is a “distributor” as defined in 40 C.F.R. § 80.2(l).
20. Respondent is a “carrier” as defined in 40 C.F.R. § 80.2(t).
21. In July 2017, gasoline retailer Wawa, Inc. (Wawa) self-reported violations of 40 C.F.R. § 80.78(a)(1)(v)(A) because it sold, dispensed, supplied, offered for sale, or stored gasoline represented as reformulated gasoline in covered areas that was not VOC-controlled for the proper VOC Control Region. The gasoline represented as reformulated gasoline was actually conventional gasoline.
22. Between June 4, 2017 and June 26, 2017, Penn Tank Lines loaded approximately 367,182 gallons of conventional gasoline from the Macungie, Pennsylvania terminal in 45 loads and delivered that conventional gasoline to 10 Wawa retail outlets in Bucks and Montgomery Counties in Pennsylvania where reformulated gasoline is required (misdelivered conventional gasoline). *See* 40 C.F.R. § 80.70(e)(4)(i) and (iv). On June 28, 2017, after Wawa notified Penn Tank Lines that Penn Tank Lines had delivered conventional gasoline to a Wawa retail outlet where reformulated gasoline is required, Penn Tank Lines pumped out 27,849 gallons of conventional gasoline from that retail outlet.

23. The EPA reviewed the bills of lading for the 45 loads of misdelivered conventional gasoline and confirmed that Penn Tank Lines loaded and delivered conventional gasoline to the Wawa retail outlets in the covered areas where reformulated gasoline is required.

V. ALLEGED VIOLATIONS OF LAW

24. The EPA alleges that Penn Tank Lines' delivery of conventional gasoline to 10 Wawa retail outlets in covered areas where reformulated gasoline is required caused Wawa to violate 40 C.F.R. § 80.78(a)(1)(v)(A) by storing gasoline that was not VOC-controlled for the proper VOC Control Region. Pursuant to 40 C.F.R. § 80.79(a)(4), Penn Tank Lines is liable for causing the violations of 40 C.F.R. § 80.78(a)(1)(v)(A).

VI. TERMS OF AGREEMENT

25. 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; 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 ratifying this Consent Agreement.
26. 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 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 will 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 the 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. § 7701);

- (i) Certifies the information it has supplied concerning this matter was at the time of submission and 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. § 1001).

27. 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 of this Consent Agreement;
- (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 its own costs and attorney fees in this matter resolved by this Consent Agreement and attached Final Order.
28. Respondent agrees to pay to the United States a civil penalty of \$104,940 (the Civil Penalty).
29. 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).
30. 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-2020-8398"; and
 - (c) Within 24 hours of payment, email proof of payment to Timothy J. Sullivan at sullivan.tim@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-2020-8398").
31. 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 30 of this Consent Agreement.

32. 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 28 through 30 (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 the 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 Tolled Claims.

VII. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

33. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this Consent Agreement and attached Final Order will only resolve Respondent's liability for federal civil penalties for the violations of law alleged above.
34. Failure to pay the full amount of the Civil Penalty assessed under this Consent Agreement and attached Final Order 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 a 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.
35. If Respondent fails to timely pay any portion of the Civil Penalty assessed by the Consent Agreement and attached Final Order, the EPA may:

- (a) Request the Attorney General 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).
36. Penalties paid pursuant to this Consent Agreement and attached Final Order are not deductible for federal tax purposes. 28 U.S.C. § 162(f).
37. This Consent Agreement and attached Final Order apply to, and are binding upon, the Parties. 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 Complainant under applicable law to assert successor or assignee liability against Respondent's successor or assignee.
38. Nothing in this Consent Agreement and attached Final Order relieves Respondent of the duty to comply with all applicable provisions of the Act or other federal, state, or local

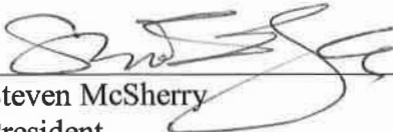
laws or statutes, or restricts the EPA's authority to seek compliance with any applicable laws or regulations, nor will it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

39. Nothing in this Consent Agreement shall be construed to limit the power of the Complainant to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to public health, welfare, or the environment.
40. Any violation of the Final Order issued by the Environmental Appeals Board in this matter may result in a civil judicial action to collect the civil penalty as provided in Section 205(c)(6) of the Act, 42 U.S.C. § 7524(c)(6). The EPA may use any information submitted under the Consent Agreement and attached Final Order in an administrative, civil judicial, or criminal action.
41. The EPA reserves the right to terminate this Consent Agreement and revoke the accompanying civil 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 and revocation, which will be effective upon mailing.
42. The Parties agree to submit this Consent Agreement to the Environmental Appeals Board with a request that it be ratified and incorporated into the attached Final Order.
43. The Parties agree to issuance of the attached Final Order. Upon filing of the Consent Agreement and attached Final Order with the Environmental Appeals Board, the EPA will transmit a copy of the filed Consent Agreement and Final Order to the Respondent.

This Consent Agreement and attached Final Order will become effective after issuance of the Final Order by the Environmental Appeals Board and filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of Penn Tank Lines, Inc., Docket No. CAA-HQ-2020-8398, is Hereby Stipulated, Agreed, and Approved for Ratification.

For Penn Tank Lines, Inc.:



Steven McSherry
President
Penn Tank Lines, Inc.
300 Lionville Station Road
Chester Springs, Pennsylvania 19425

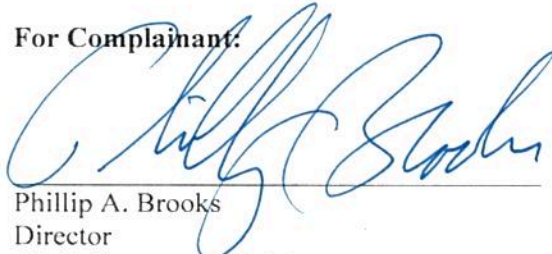
12.18.19

Date

Respondent's Federal Tax Identification Number: 23-2845134

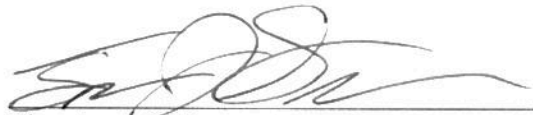
The foregoing Consent Agreement In the Matter of Penn Tank Lines, Inc., Docket No. CAA-HQ-2020-8398, is Hereby Stipulated, Agreed, and Approved for Ratification.

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 Avenue, NW (MC2242A)
Washington, D.C. 20460-0001

2/5/2020
Date



Timothy J. Sullivan
Attorney-Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202-1129

01.13.2020
Date

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

IN THE MATTER OF:

PENN TANK LINES, INC.

Respondent.

Docket No. CAA-HQ-2020-8398

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of the EPA’s Consolidated Rules of Practice and Section 205(c)(1) of the Clean Air Act, 42 U.S.C. § 7524(c)(1), 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.¹

ENVIRONMENTAL APPEALS BOARD

Dated: _____

[Official Name of Lead Judge]
Environmental Appeals Judge

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges _____, _____, and _____.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Consent Agreement and Final Order, In the Matter of Penn Tank Lines, Inc., Docket No. CAA-HQ-2020-8398, were sent to the following persons in the manner indicated:

By E-mail:

Mr. Stephen McSherry
Penn Tank Lines, Inc.
300 Lionville Station Road
Chester Springs, Pennsylvania 19425

E-mail: SMcSherry@Penntanklines.com

By E-mail:

Timothy J. Sullivan
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street (MC 8MSU)
Denver, Colorado 80202-1129

E-mail: sullivan.tim@epa.gov

Dated: _____

Annette Duncan
Administrative Specialist