

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

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In re Phillips 66 Company)	Docket No. CAA-HQ-2024-8445
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)	

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



 Aaron P. Avila
 Environmental Appeals Judge

Dated: January 3, 2025

¹ The two-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila and Wendy L. Blake.

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

IN THE MATTER OF:

PHILLIPS 66 COMPANY

Respondent.

Docket No. CAA-HQ-2024-8445

CONSENT AGREEMENT

I. 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 7545(d)(1). The issuance of this Consent Agreement and attached Final Order (CAFO) simultaneously commences and concludes this proceeding. 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(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 CAA, 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 the Phillips 66 Company (Phillips 66). The Respondent is a corporation organized under the laws of Delaware with its corporate headquarters located at 2231 City West Blvd., Houston, Texas 77043. As relevant here, the

Respondent operates a fuel manufacturing facility located in Rodeo, California that, at the time of the violations, produced petroleum products, including diesel. The facility has since transitioned to only producing renewable fuels.

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 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*, as codified at 40 C.F.R. Part 22 (Consolidated Rules).
6. The EPA may administratively assess a civil penalty if the penalty sought is less than \$460,926. 42 U.S.C. §§ 7524(c)(1) and 7545(d)(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) and 22.18(b)(2)-(3).

III. GOVERNING LAW

9. This proceeding arises under Part A of Title II of the CAA, Sections 202-219, 42 U.S.C. §§ 7521–7554, and its implementing regulations (40 C.F.R. Part 1090). The CAA 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 sampling, testing, and reporting requirements that ensure the programmatic integrity of EPA’s oversight of diesel fuel. A summary of the law and regulations that govern these allegations follows below.

10. Definitions:

(a) “Compliance period” means the calendar year (January 1 through December 31). 40 C.F.R. § 1090.80.

(b) “Diesel fuel” means any of the following: (1) Any fuel commonly or commercially known as diesel fuel; (2) Any fuel (including nonpetroleum diesel fuel or a fuel blend that contains nonpetroleum diesel fuel) that is intended or used to power a vehicle or engine that is designed to operate using diesel fuel; (3) Any fuel that conforms to the specifications of ASTM D975 (incorporated by reference in 40 C.F.R. § 1090.95) and is made available for use in a vehicle or engine designed to operate using diesel fuel. 40 C.F.R. § 1090.80.

- (c) “Diesel fuel manufacturer” means a fuel manufacturer that owns, leases, operates, controls, or supervises a fuel manufacturing facility where diesel fuel is produced or imported. 40 C.F.R. § 1090.80.
- (d) “Fuel manufacturer” means any person that owns, leases, operates, controls, or supervises a fuel manufacturing facility. Fuel manufacturers include refiners, importers, blending manufacturers, and transmix processors. 40 C.F.R. § 1090.80.
- (e) “Fuel manufacturing facility” means any facility where fuels are produced, imported, or recertified. Fuel manufacturing facilities include refineries, fuel blending facilities, transmix processing facilities, import facilities, and any facility where fuel is recertified. 40 C.F.R. § 1090.80.
- (f) Ultra-low-sulfur diesel (ULSD) means diesel fuel that is certified to meet the standards in 40 C.F.R. § 1090.305. 40 C.F.R. § 1090.80.

- 11. Section 211 of the CAA, 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 CAA, 42 U.S.C. § 7545(c)(1), the EPA may adopt a fuel control if: (a) the emission products of the fuel cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare; or (b) the emission products of the fuel will significantly impair emissions control systems in general use or emissions control systems that would be in general use were the fuel control to be adopted.

13. Pursuant to its authority under Section 211(c)(1) of the CAA, 42 U.S.C. § 7545(c)(1), the EPA promulgated regulations that require fuel manufacturers to perform testing as needed to certify fuel. *See* 40 C.F.R. § 1090.1310.
14. Test results with manual sampling are valid only after demonstrating homogeneity. To demonstrate homogeneity for diesel fuel, refiners must either measure API gravity using ASTM D287, ASTM D1298, ASTM D4052, or ASTM D7777; or measure the sulfur content as specified in § 1090.1360. *See* 40 C.F.R. §§ 1090.1335(b)(4) and 1090.1337(e).
15. Diesel fuel manufacturers must submit certain information to the EPA for each compliance period, including the sulfur content of each batch. *See* 40 C.F.R. § 1090.935.
16. The presumed sulfur value of 1,000 ppm for diesel fuel must be reported when a person fails to comply with the sampling or testing requirements and must be reported, unless EPA, in its sole discretion, approves a different value. 40 C.F.R. § 1090.1710(g).
17. Any person who, after November 2, 2015, where penalties are assessed on or after December 27, 2023, violates the regulations prescribed under Section 211(c) of the CAA, 42 U.S.C. § 7545(c), including the diesel homogeneity and reporting regulations at 40 C.F.R. Part 1090, is subject to a civil penalty up to \$57,617 per day per violation, plus the economic benefit or savings resulting from each violation. 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. §§ 7524(b) and (c). 42 U.S.C. § 7545(d)(1).

IV. STIPULATED FACTS

18. Phillips 66 owns and operates a “fuel manufacturing facility,” as defined in 40 C.F.R. § 1090.80, in Rodeo, California that, at the time of the violations, produced petroleum-based diesel.

19. Respondent is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
20. Respondent is a “fuel manufacturer” as defined in 40 C.F.R. § 1090.80.
21. During the week of February 27, 2023, the EPA conducted an on-site inspection of Phillips 66 for compliance with CAA § 211 and the fuels regulations promulgated under 40 C.F.R. Parts 80 and 1090.
22. On February 13, 2024, the EPA issued Phillips 66 a notice of violation (NOV) pursuant to Sections 205 and 211 of the CAA, 42 U.S.C. §§ 7524 and 7545, for violations of the 40 C.F.R. Part 1090 fuels regulations.

V. ALLEGED VIOLATIONS OF LAW

23. A fuel manufacturer is required to perform sampling and testing to certify that each batch of diesel fuel it produces meets the applicable fuel standards. 40 C.F.R. § 1090.1310. By failing to demonstrate homogeneity for diesel batches produced at its Rodeo Refinery during compliance years 2021, 2022, and two months of 2023, Phillips 66 violated the requirements at 40 C.F.R. §§ 1090.1335(b)(4) and 1090.1337(e), which state that certification test results are only valid after demonstrating homogeneity.
24. By failing to report the presumed sulfur value of 1,000 ppm for batches of ULSD produced at the Rodeo Refinery during compliance years 2021, 2022, and two months of 2023, Phillips 66 violated the requirement at 40 C.F.R. § 1090.1710(g) that when a person fails to comply with the sampling or testing requirements, the presumed sulfur value of 1,000 ppm must be reported.

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. By signing this consent agreement, respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.
27. 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;
 - (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 it 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 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 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 Consent 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).

28. 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 the action resolved by this Consent Agreement and attached Final Order.
29. Respondent agrees to pay to the United States a civil penalty of \$292,595 (Civil Penalty).
30. 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).
31. 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-2024-8445”; and
 - (c) Within 24 hours of payment, email proof of payment to Griff Brown at Brown.Griffith@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 the EPA requirements, in the amount due, and identified with “Docket No. CAA-HQ-2024-8445”).
32. As a condition of settlement, Respondent agrees that it 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 31 of this Agreement.

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 will only resolve Respondent’s liability for federal civil penalties for the violations and facts specifically alleged above.
34. 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 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 attached Final Order, the EPA may:
- (a) Request that 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 on 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. This Consent Agreement shall not confer any rights or obligations upon any person other than the Parties and shall not be enforceable by any other person except the Parties hereto.
39. 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.
40. 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.
41. 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 CAA, 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.
42. The EPA reserves the right to revoke this Consent Agreement and 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, which will be effective upon mailing.

43. 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.
44. 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: Phillips 66 Company, Docket No. CAA-HQ-2024-8445, is Hereby Stipulated, Agreed, and Approved for Ratification.

For Phillips 66 Company:



Karen Albrecht, General Manager
HSE and Compliance *AK*

12/18/2024

Date

Respondent's Federal Tax Identification Number: 45-3779385

The foregoing Consent Agreement, In the Matter of: Phillips 66 Company, Docket No. CAA-HQ-2024-8445, is Hereby Stipulated, Agreed, and Approved for Ratification.

For Complainant:

MARY GREENE Digitally signed by MARY GREENE
Date: 2024.12.31 15:26:15 -05'00'

Mary E. Greene, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC-2242A)
Washington, DC 20460

LORRAINE BAER Digitally signed by LORRAINE BAER
Date: 2024.12.31 15:36:13 -05'00'

Lorraine Baer
Attorney-Adviser
Fuels Enforcement Branch
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of Phillips 66 Company, Docket No. CAA-HQ-2024-8445, were sent to the following persons in the manner indicated:

By E-mail:

Donna Carvalho
Phillips 66 Company
2331 CityWest Blvd.
Houston, TX 77042
E-mail: Donna.H.Carvalho@p66.com

Lorraine Baer
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20004
E-mail: Baer.Lorraine@epa.gov

Dated: Jan 03, 2025

Tommie Madison

Tommie Madison
Clerk of the Board