

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

IN THE MATTER OF:

AMERICAN REFINING GROUP, INC.

Respondent.

Docket No. CAA-HQ-21-8418

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 (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)-(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 American Refining Group, Inc. (ARG). The Respondent is a corporation organized under the laws of the Commonwealth of Pennsylvania with its corporate headquarters located at 55 Alpha Drive West, The Landings- 3rd Floor,

B3

Pittsburgh, Pennsylvania 15238. The Respondent operates a refinery located in Bradford, Pennsylvania that produces petroleum products, including gasoline.

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*, 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 \$390,092. 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).

B3

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 80¹). 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 benzene from gasoline. A summary of the law and regulations that govern these allegations follows below.
10. Definitions:
- (a) “CBOB” means gasoline blendstock that could become conventional gasoline solely upon the addition of oxygenate. 40 C.F.R. § 80.2(aaaa).
 - (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. 40 C.F.R. § 80.2(c).
 - (c) “Gasoline Blendstock” means any liquid compound which is blended with other liquid compounds to produce gasoline. 40 C.F.R. § 80.2(s).
 - (d) “Oxygenate” means any substance which, when added to gasoline, increases the oxygen content of that gasoline. Lawful use of any of the substances or any combination of these substances requires that they be “substantially similar” under Section 211(f)(1) of the Clean Air Act, 42 U.S.S. 7545(f)(1), or

¹ All citations to 40 C.F.R. Part 80 relate to the fuels regulations that were in effect at the time of the violations. In 2020, the fuels regulations were consolidated and reissued at 40 C.F.R. Part 1090.

be permitted under a waiver granted by the Administrator under the authority of the Section 211(f)(4) of the Clean Air Act, 42 U.S.C. § 42 U.S.C. 7545(f)(4). 40 C.F.R. § 80.2(jj).

(e) “Refiner” means any person who owns, leases, operates, controls, or supervises a refinery. 40 C.F.R. § 80.2(i).

(f) “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. 40 C.F.R. § 80.2(h).

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 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. Section 202(l)(2) of the Act, 42 U.S.C. § 7521(l)(2), provides that the 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, including emissions of benzene.

B3

14. Pursuant to its authority under Sections 202(l)(2) and 211(c)(1) of the Act, 42 U.S.C. §§ 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, 8432 (Feb. 26, 2007).
15. The gasoline benzene regulations provide, *inter alia*, that a refinery's maximum average gasoline benzene concentration in any averaging period shall not exceed 1.30 volume percent. 40 C.F.R. § 80.1230(b)(1).
16. Compliance with the 1.30 volume percent maximum average gasoline benzene standard at 40 C.F.R. § 80.1230(b)(1) is determined in accordance with 40 C.F.R. § 80.1240(b). 40 C.F.R. § 80.1230(b)(2).
17. The averaging period for achieving compliance with the 1.30 volume percent maximum average gasoline benzene standard at 40 C.F.R. § 80.1230(b)(1) is July 1, 2016 through December 31, 2017, and each calendar year thereafter for small refiners approved under 40 C.F.R. § 80.1340. 40 C.F.R. § 80.1230(b)(3).
18. For the purposes of determining a refinery's compliance with the 1.30 volume percent maximum average benzene standard at 40 C.F.R. § 80.1230(b)(1), CBOB that is produced during the averaging period is considered to be "gasoline" and is included in a refinery's compliance determination under 80.1240(b). 40 C.F.R. § 80.1235(a).
19. Pursuant to 40 C.F.R. § 80.1358(a)(1), it is a violation to produce gasoline that does not comply with the 1.30 volume percent maximum average benzene standard at 40 C.F.R. § 80.1230(b)(1). Pursuant to 40 C.F.R. § 80.1360(a)(1), any refiner who violates 40 C.F.R. § 80.1358(a) is liable for the violation.

20. Any person who, after November 2, 2015, where penalties are assessed on or after December 23, 2020, violates the regulations prescribed under Sections 211(c) of the Act, 42 U.S.C. § 7545(c), including the gasoline benzene regulations at 40 C.F.R. Part 80, Subpart L, is subject to a civil penalty up to \$48,762 per day per violation, plus the economic benefit or savings resulting from each violation. *Id.*; 40 C.F.R. § 19.4. Such penalties are assessed in accordance with Sections 205(b) and (c) of the Act, 42 U.S.C. §§ 7524(b) and (c). 42 U.S.C. § 7545(d)(1).

IV. STIPULATED FACTS

21. On January 24, 2008, the EPA granted ARG's application under 40 C.F.R. § 80.1340 for small refiner status under the gasoline benzene program.
22. On November 16, 2017, ARG notified the EPA that ARG would likely not be in compliance with Section 211 of the Act, 42 U.S.C. § 7545, and the 1.30 volume percent maximum average gasoline benzene standard at 40 C.F.R. § 80.1230(b)(1) for the July 1, 2016 through December 31, 2017 averaging period.
23. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
24. Respondent is a "refiner" as defined in 40 C.F.R. § 80.2(i).
25. For the July 1, 2016 through December 31, 2017 averaging period, ARG reported that its Bradford, Pennsylvania refinery (Facility ID 07726) produced 43,236,309 gallons of CBOB with an average benzene concentration of 1.36 volume percent.

V. ALLEGED VIOLATIONS OF LAW

26. By producing 43,236,309 gallons of CBOB with an average benzene concentration exceeding 1.30 volume percent for the averaging period in Paragraph 25, ARG violated

the requirement at 40 C.F.R. § 80.1230(b)(1) that a refinery's maximum average gasoline benzene concentration in any averaging period shall not exceed 1.30 volume percent.

VI. TERMS OF AGREEMENT

27. 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.
28. 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 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).

29. 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.
30. Respondent agrees to pay to the United States a civil penalty of \$220,000 (Civil Penalty).

BZ

31. 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).
32. 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-21-8418”; and
 - (c) Within 24 hours of payment, email proof of payment to Taylor Waanders at Waanders.Taylor@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-21-8418”).
33. 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 32 of this Agreement.
34. 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 30 through 32 (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 Tolloed Claims) set forth in the Alleged Violations of Law section of this

67

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.

VII. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

35. 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 of law alleged above.
36. 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.
37. 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).
38. Penalties paid pursuant to this Consent Agreement and attached Final Order are not deductible for federal tax purposes. 28 U.S.C. § 162(f).
39. 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.
40. Nothing in this Consent Agreement 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.
41. 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.

42. 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.
43. 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.
44. 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.
45. 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 American Refining Group, Inc., Docket No. CAA-HQ-21-8418, is Hereby Stipulated, Agreed, and Approved for Ratification.

For American Refining Group, Inc.:



Brian Zolkos
Chief Financial Officer
55 Alpha Drive West
The Landings- 3rd Floor
Pittsburgh, PA 15238

Date



8/19/21

Respondent's Federal Tax Identification Number: 22-2318612

The foregoing Consent Agreement, In the Matter of American Refining Group, Inc., Docket No. CAA-HQ-21-8418, is Hereby Stipulated, Agreed, and Approved for Ratification.

For Complainant:

EVAN
BELSER

Digitally signed by EVAN
BELSER
Date: 2021.09.20
12:07:08 -04'00'

Evan Belser
Acting 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

Date

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Consent Agreement and Final Order in the matter of American Refining Group, Inc., Docket No. CAA-HQ-21-8418, were sent to the following persons in the manner indicated:

By E-mail:

Alexandra Magill Bromer
Perkins Coie LLP
700 Thirteenth Street, N.W. Suite 800
Washington, DC 20005
E-mail: ABromer@perkinscoie.com

Taylor Waanders
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202
E-mail: Waanders.Taylor@epa.gov

Dated: Sep 28, 2021



Emilio Cortes
Clerk of the Board