

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

In the Matter of:

Total Petrochemicals & Refining USA, Inc.
f/k/a TOTAL PETROCHEMICALS USA,
INC.,

Respondent.

Administrative Settlement
Agreement
AED/MSEB # 8018

This Administrative Settlement Agreement (ASA) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Total Petrochemicals & Refining USA, Inc. f/k/a TOTAL PETROCHEMICALS USA, INC. (Respondent) having an office at 1201 Louisiana Street, Suite 1800, Houston, TX 77002.

Purpose:

1. The purpose of this ASA is to resolve Respondent's alleged violations of the Clean Air Act (CAA) and the Renewable Fuel Standards regulations promulgated thereunder at 40 C.F.R. Part 80, Subpart M (RFS2 Regulations).

Statutory and Regulatory Authority:

2. Section 211(o) of the CAA, 42 U.S.C. § 7545(o), as amended by the Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 1492, required EPA to promulgate regulations designed to increase the amount of renewable fuels used in transportation fuel in the United States, lower greenhouse gas emissions, and reduce the nation's reliance on foreign-sourced petroleum.
3. The RFS2 Regulations require renewable fuel producers and importers to generate and assign Renewable Identification Numbers (RINs) in proportion to the amount

and type of renewable fuel that they produce or import. 40 C.F.R. §§ 80.1425, 80.1426.

4. 40 C.F.R. § 80.1406 defines an obligated party as “any refiner that produces gasoline or diesel fuel within the 48 contiguous states or Hawaii, or any importer that imports gasoline or diesel fuel into the 48 contiguous states or Hawaii during a compliance period.”
5. 40 C.F.R. §§ 80.1427(a) and 80.1430 require each obligated party and each exporter of renewable fuel to demonstrate compliance with its Renewable Volume Obligation (RVO) by obtaining and retiring the number of RINs required by the calculation set forth at 40 C.F.R. §§ 80.1407 or 80.1430.
6. 40 C.F.R. § 80.1431(a)(1)(vi) provides that a RIN that does not represent renewable fuel as defined in 40 C.F.R. § 80.1401 is invalid, and 40 C.F.R. § 80.1431(a)(1)(ix) provides that a RIN that was improperly generated is invalid.
7. 40 C.F.R. § 80.1460(c)(1) states that no person shall fail to acquire sufficient RINs, or use invalid RINs, to meet the person’s RVO under 40 C.F.R. § 80.1427.
8. 40 C.F.R. § 80.1461(a)(1) states that any person who violates a prohibition under 40 C.F.R. § 80.1460(a)–(d) is liable for the violation of that prohibition.
9. 40 C.F.R. § 80.1463(a) provides that any person who is liable for a violation under 40 C.F.R. § 80.1461 is subject to a civil penalty as specified in sections 205 and 211(d) of the CAA, 42 U.S.C. §§ 7524 and 7545(d), for every day of each such violation.

10. 40 C.F.R. § 80.1463(b) provides that any person who is liable under 40 C.F.R. § 80.1461(a) for a violation of 40 C.F.R. § 80.1460(c) for failure to meet its RVO is subject to a separate violation for each day in the compliance period.
11. Sections 205 and 211(d) of the CAA authorize EPA to assess a civil penalty of up to \$37,500 per day for each violation, plus the economic benefit or savings resulting from each violation. 42 U.S.C. §§ 7524, 7545(d).

Background:

12. Respondent used the 800,000 RINs identified in Attachment A (the Subject RINs), which were generated by Green Diesel, LLC, to meet its 2010 RVO.
13. EPA alleges that the Subject RINs are invalid because they do not represent renewable fuel and were improperly generated.
14. Respondent represents that it implemented remedial actions by removing the Subject RINs from its RFS0301: 2010 RFS2 annual compliance report and resubmitted corrected report to EPA, as required by 40 C.F.R. § 80.1431(b).
15. Respondent represents that it believed that the Subject RINs were valid at the time it acquired the Subject RINs and at the time it used the Subject RINs to meet its RVO.
16. EPA and Respondent (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. By agreeing to the terms of this ASA, Respondent makes no admission of law or fact with respect to any of the allegations set forth in this ASA.

Violations:

17. EPA has alleged that Respondent violated section 211(o) of the CAA, 42 U.S.C. § 7545(o), and 40 C.F.R. § 80.1460(c)(1) by using the Subject RINs to meet its 2010 RVO.

Terms of the Agreement and Civil Penalty:

18. In any enforcement or penalty action arising out of this ASA or the subject matter of this ASA:
 - a. The Parties agree that the settlement of this matter is in the public interest and that this ASA is the most appropriate means of resolving the matter; and
 - b. The Parties further agree that jurisdiction to settle this matter exists pursuant to sections 205 and 211 of the CAA, 42 U.S.C. §§ 7524 and 7545, 40 C.F.R. Part 80, and other provisions of law.
19. Respondent agrees to pay a civil penalty of \$80,000 (EPA Penalty) to the United States of America within 30 calendar days of the effective date of this ASA (penalty due date), but not before the effective date. Late payment of the penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. This penalty amount was calculated based on EPA's Interim Enforcement Response Policy (March 2012). Respondent agrees to pay the EPA Penalty in the manner specified below:
 - a. Pay the EPA Penalty using any method, or combination of methods, provided on the following website:
http://www.epa.gov/cfo/finservices/payment_instructions.htm;

- b. Identify each and every payment with “AED/MSEB # 8018”; and
- c. Within 24 hours of payment, email proof of payment to Evan M. Belser at belser.evan@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 “AED/MSEB # 8018”).

Stipulated Penalties:

- 20. Respondent shall pay stipulated penalties of \$1,000 per day for failure to timely pay the penalty, or provide proof thereof, pursuant to Paragraph 19.
- 21. Stipulated penalties under Paragraph 20 of this ASA shall begin to accrue on the day after performance is due and shall continue to accrue until the day compliance is achieved. Stipulated penalties shall be paid in accordance with Paragraph 19 of this ASA.

General Provisions:

- 22. This ASA becomes effective upon the date executed by EPA (effective date of the ASA), at which time a copy will be returned to Respondent.
- 23. Notwithstanding any other provision of this ASA, upon Respondent’s failure to perform, or default, or failure to comply with any term of this ASA, EPA may refer this matter to the United States Department of Justice to recover civil penalties pursuant to section 205 of the CAA, 42 U.S.C. § 7524, commence an action to enforce this ASA, recover the civil penalty pursuant to section 205 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 original claim of violations of the CAA and the regulations promulgated thereunder at 40 C.F.R. Part 80. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, any applicable statute of limitation, or other provisions limiting actions as a result of passage of time. Respondent 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.

24. The Parties represent that the individual or individuals executing this ASA on behalf of Respondent are authorized to do so and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.
25. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters consented to herein.
26. The validity, enforceability, and construction of all matters pertaining to this ASA shall be determined in accordance with applicable federal law.
27. This ASA is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA in this ASA.

Effect of ASA:

28. This ASA resolves the EPA's civil claims for the violations alleged in Paragraph 17. The resolution of claims set forth in this Paragraph shall take effect upon the receipt by the United States of the civil penalty payment required by Paragraph 19. Nothing herein shall limit the right of EPA to proceed against Respondent in

the event of default or noncompliance with this ASA, for violations of section 211 of the CAA, 42 U.S.C. § 7545, which are not the subject matter of this ASA, for other violations of law, or with respect to other matters not within the scope of this ASA. This ASA in no way affects or relieves Respondent of responsibility to comply with other state, federal, or local laws or regulations.

SIGNATURES ON FOLLOWING PAGES

Administrative Settlement Agreement – In the Matter of:
Total Petrochemicals & Refining USA, Inc. f/k/a TOTAL PETROCHEMICALS USA,
INC., AED/MSEB # 8018

The following agree to the terms of this ASA:

Total Petrochemicals & Refining USA, Inc. f/k/a TOTAL PETROCHEMICALS *D2M1*
USA, INC.

By:  Date: 6/4/2013

Typed or Printed Name: Geoffrey Petit

Typed or Printed Title: VP

Federal Tax Identification Number: 75-0990403

Administrative Settlement Agreement – In the Matter of:
Total Petrochemicals & Refining USA, Inc. f/k/a TOTAL PETROCHEMICALS USA,
INC., AED/MSEB # 8018

United States Environmental Protection Agency

By: 

Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement

Date: 6/12/2013

Attachment A
Administrative Settlement Agreement, AED/MSEB # 8018

**List of Invalid Renewable Identification Numbers Total Petrochemicals & Refining USA,
Inc. f/k/a TOTAL PETROCHEMICALS USA, INC. Retired for Compliance Purposes**

Company: 4674, Green Diesel LLC Facility: 82552, Green Diesel LLC Fuel: 4 Assignment: 2 Equivalence Value: 1.5			
RIN Batch ID	Batch Number	RIN Quantity	RIN Year
1826150	4476	148211	2010
1779536	4477	1229	2010
1788069	4477	170244	2010
1788070	4477	25606	2010
1788200	4478	24377	2010
1780103	4478	2573	2010
1788079	4478	189364	2010
1780700	4479	4021	2010
1866819	4479	175499	2010
1788208	4479	21804	2010
1780704	4480	5525	2010
1788214	4480	17783	2010
1780711	4481	3798	2010
1788219	4482	1506	2010
1780706	4483	8460	2010