

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

	)	
<b>In the Matter of:</b>	)	
	)	
<b>Phillips 66 Company</b>	)	Administrative Settlement
	)	Agreement
<b>Respondent.</b>	)	AED/MSEB # 8043
	)	

This Administrative Settlement Agreement (ASA) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Phillips 66 Company (Respondent or Phillips 66), regarding Respondent's compliance with Section 211 of the Clean Air Act (CAA) and the regulations promulgated thereunder at 40 C.F.R. Part 80. Phillips 66 owns and operates various domestic refineries and terminals and operates the Wood River Refinery and Borger Refinery on behalf of WRB Refining LP.

**Purpose:**

1. The purpose of this ASA is to resolve alleged noncompliance by Respondent with the requirements of Section 211 of the CAA and the regulations promulgated thereunder at 40 C.F.R. Part 80.

**Regulatory Authority:**

2. 40 C.F.R. § 80.370(a)(7)(iv) requires that refiners shall report the sulfur content of all batches of gasoline produced or imported during the averaging period (January 1 through December 31), as determined under 40 C.F.R. § 80.330.
3. 40 C.F.R. § 80.365(a)(2)(iii) requires that any person who produces gasoline shall keep records containing the results of sulfur content testing as originally printed by the testing apparatus, or as originally recorded by the person who performed the test.

4. 40 C.F.R. § 80.104(a)(2)(i) requires that refiners shall maintain the results of tests performed in accordance with 40 C.F.R. § 80.101(i).
5. 40 C.F.R. § 80.105(a)(5)(v) requires that beginning with the 1995 averaging period, and for each subsequent averaging period, any refiner for each refinery or group of refineries at which any conventional gasoline is produced shall submit to the Administrator a report for each batch of conventional gasoline that contains the properties of the batch determined pursuant to 40 C.F.R. § 80.101(i).
6. 40 C.F.R. § 80.101(g)(9)(iii)(A) requires that for each batch of previously certified gasoline that is used to produce conventional gasoline the refiner must determine the volume and properties using the procedures in 40 C.F.R. § 80.101(i).
7. 40 C.F.R. § 80.101(i)(1)(i)(A) states that any refiner shall for each batch of conventional gasoline determine the value of each of the properties required for determining compliance with the standards that are applicable to the refiner, by collecting and analyzing a representative sample of gasoline or blendstock taken from the batch, using the methodologies specified in § 80.46, with exceptions not at issue here.
8. 40 C.F.R. § 80.46(b) requires that the olefin content must be determined by use of ASTM standard method D1319. ASTM standard method D1319 is incorporated by reference in 40 C.F.R. § 80.46(h).
9. 40 C.F.R. § 80.8(a) requires that manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in ASTM method D 4057-95(2000).
10. 40 C.F.R. § 80.106(a)(1)(vi) requires that on each occasion when any person transfers custody or title to any conventional gasoline, the transferor shall provide to the transferee product transfer documents (PTDs) which include the following statement: “This product does not meet the requirements for reformulated gasoline, and may not be used in any reformulated gasoline covered area.”

11. The Gasoline Sulfur regulations at 40 C.F.R. Part 80, Subpart H include an Averaging, Banking, and Trading Program (ABT Program), which allows regulated parties to comply with the fuel sulfur standards through the use of sulfur credits, as described in 40 C.F.R. § 80.285, et al.
12. Under the ABT Program, an oxygenate blender may not generate sulfur credits under 40 C.F.R. § 80.310. 40 C.F.R. § 80.285(b)(3).
13. An oxygenate blender is any person who owns, leases, operates, controls, or supervises an oxygenate blending facility, or who owns or controls the blendstock or gasoline used or the gasoline produced at an oxygenate blending facility. 40 C.F.R. § 80.2(mm).
14. An oxygenate blending facility is any facility (including a truck) at which oxygenate is added to gasoline or blendstock, and at which the quality or quantity of gasoline is not altered in any other manner except for the addition of deposit control additives. 40 C.F.R. § 80.2(ll).
15. Oxygenate means any substance which, when added to gasoline, increases the oxygen content of that gasoline. 40 C.F.R. § 80.2(jj).

**Background:**

16. The EPA along with its contractor, Bionetics Corporation (Bionetics), conducted a refinery audit of the following facilities, which are owned and operated by Phillips 66: (1) Phillips 66's headquarters in Houston, Texas, on October 25-28, 2010; (2) the Sweeny Refinery in Old Ocean, Texas, on October 27-28, 2010; (3) the Alliance Refinery in Belle Chasse, Louisiana, on November 8-9, 2010; and (4) the Wood River Refinery in Roxana, Illinois, on November 10-11, 2010. Specifically, the EPA and Bionetics audited the period from January 2008 through December 2009.
17. The EPA alleges that Phillips 66 is a refiner, which is any person, who owns, leases, operates, controls, or supervises a refinery. 40 C.F.R. § 80.2(i).
18. The EPA alleges that Phillips 66 is a person, which includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency,



department, or instrumentality of the United States and any officer agent, or employee thereof.  
42 U.S.C. § 7602(e).

19. The EPA alleges that Phillips 66 violated 40 C.F.R. § 80.370(a)(7)(iv), which requires that refiners shall report the sulfur content of the batches of gasoline produced or imported during the averaging period, as determined under 40 C.F.R. § 80.330. The EPA alleges that Phillips 66 violated this requirement at the Alliance Refinery in 2008 by incorrectly reporting sulfur results for 8 batches.
20. The EPA alleges that Phillips 66 violated 40 C.F.R. § 80.365(a)(2)(iii), which requires any person who produces gasoline, to keep records containing the results of sulfur content testing as originally printed by the testing apparatus, or as originally recorded by the person who performed the test. The EPA alleges that Phillips 66 violated this requirement at the Alliance Refinery in 2008 by failing to retain the original sulfur test results for 81 batches.
21. The EPA alleges that Phillips 66 violated 40 C.F.R. § 80.104(a)(2)(i), which requires that refiners maintain the results of tests performed in accordance with 40 C.F.R. § 80.101(i)(1)(i)(A). The EPA alleges that Phillips 66 violated this requirement at the Lake Charles Refinery in 2008 because it did not have any supporting documentation for conventional gasoline batch 97, except the Certificate of Analysis.
22. The EPA alleges that Phillips 66 violated 40 C.F.R. § 80.105(a)(5)(v) and 40 C.F.R. § 80.101(i)(1)(i)(A) because Phillips 66 misreported the benzene test results for conventional gasoline Batch 260, produced on October 9, 2008, at the Lake Charles Refinery. The value on the Certificate of Analysis and the value that Phillips 66 reported to the EPA was 1.95%, but the EPA determined that the laboratory worksheet reported a benzene test result of 1.97%.
23. The EPA alleges that Phillips 66 violated 40 C.F.R. § 80.105(a)(5)(v) and 40 C.F.R. § 80.101(i)(1)(i)(A) because Phillips 66 misreported the benzene test results for conventional gasoline Batch 292, produced on November 10, 2008, at the Lake Charles Refinery. The value

on the Certificate of Analysis, the value on a LabLynx printout, and the value that Phillips 66 reported to the EPA was 1.68%, but the laboratory worksheet showed a benzene test result of 1.48%.

24. The EPA alleges that Phillips 66 violated 40 C.F.R. § 80.105(a)(5)(v) and 40 C.F.R. § 80.101(i)(1)(i)(A) because Phillips 66 misreported the benzene test results for conventional gasoline Batch 183, produced on August 12, 2009, at the Lake Charles Refinery. The value that Phillips 66 reported to the EPA was 1.98%, but the laboratory worksheet showed a benzene test result of 2.08%, and the Certificate of Analysis showed a benzene test result of 2.11%.
25. The EPA alleges that in November 2010, Phillips 66 violated 40 C.F.R. § 80.8(a), which requires that manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in ASTM method D 4057-95(2000). The person who conducted the sampling for Phillips 66 failed to fill and drain the sampling apparatus with the volatile product prior to taking a composite sample to be used for batch certification. *See*, ASTM D 4057, Paragraph 12.2.3.
26. The EPA alleges that in November 2010, Phillips 66 violated 40 C.F.R. § 80.46(b) and 40 C.F.R. § 80.46(h) at the Wood River Refinery by failing to properly follow the standard method, ASTM D 1319-03e1 to determine the olefin content of the batch. Specifically, the dyed gel used was not stored under an atmosphere of nitrogen. *See*, ASTM D 1319-03e1, Paragraph 7.2.
27. The EPA alleges that Phillips 66 violated 40 C.F.R. § 80.106(a)(1)(vi), which requires that on each occasion when any person transfers custody or title to any conventional gasoline, the transferor shall provide to the transferee PTDs which include the following statement: “This product does not meet the requirements for reformulated gasoline, and may not be used in any reformulated gasoline covered area.” The EPA alleges that in 2008 Phillips 66 failed to include this statement in:
  - a. 29 PTDs at its Ponca City Rack Terminal;

- b. 19 PTDs at its Wrenshall Products Terminal; and
  - c. 25 PTDs at its Spokane Terminal.
28. The EPA alleges that Phillips 66 violated 40 C.F.R. § 80.101(g)(9)(iii)(A) at its Pasadena terminal in 2008 by allegedly failing to test batch # 45280754108000004 for aromatics and olefins during the laboratory testing of the batch.
29. The EPA alleges that Phillips 66 violated 40 C.F.R. § 80.365(a)(2)(iii) because in 2008 Phillips 66 allegedly failed to keep the original sulfur test results for:
- a. 8 batches at the East Chicago Terminal;
  - b. 11 batches at the East St. Louis Terminal;
  - c. 20 batches at the Paola Terminal;
  - d. 29 batches at the Lake Charles Refinery; and
  - e. 22 batches at the Borger Refinery.
30. The EPA alleges that Phillips 66 violated 40 C.F.R. § 80.106(a)(1)(vi), which requires that on each occasion when any person transfers custody or title to any conventional gasoline, the transferor shall provide to the transferee PTDs which include the following statement: “This product does not meet the requirements for reformulated gasoline, and may not be used in any reformulated gasoline covered area.” The EPA alleges that Phillips 66 failed to include this statement in 3 PTDs at its Spokane Terminal in 2009.
31. The EPA alleges that Phillips 66 violated 40 C.F.R. § 80.365(a)(2)(iii) because in 2009 Phillips 66 allegedly failed to keep the original sulfur test results for:
- a. 3 batches at the Borger Refinery;
  - b. 3 batches at the East Chicago Terminal;
  - c. 1 batch at the East St. Louis Terminal;
  - d. 1 batch at the Kansas City Terminal; and
  - e. 2 batches at the Lake Charles Refinery.



32. From 2006 through 2012, certain Phillips 66 facilities met the definition of an “oxygenate blending facility” because ethanol, an oxygenate, was added to conventional gasoline, without the gasoline being altered in any other manner except for the addition of deposit control additives. *See* 40 C.F.R. § 80.2(II). The EPA alleges that all of the sulfur credits that Phillips 66 generated between 2006 and 2012 at its oxygenate blending facilities were invalid because oxygenate blenders are not permitted to generate sulfur credits. *See* 40 C.F.R. § 80.2(mm) and 40 C.F.R. § 80.285(b)(3).
33. During settlement negotiations, Phillips 66 submitted a letter to the EPA stating that it had voluntarily retired 3,465,302,635 sulfur credits that it had generated in 2007, in order to mitigate any potential harm associated with its alleged generation of invalid sulfur credits.
34. The EPA and the 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.

**Terms of the Agreement and Civil Penalty:**

35. Within 30 days of the effective date of this ASA, Respondent agrees to retire the following number of sulfur credits that it generated at its oxygenate blending facilities: 6,733,858,320 sulfur credits that it generated in 2010, 6,683,223,960 sulfur credits that it generated in 2011, and 7,982,576,280 sulfur credits that it generated in 2012. Respondent shall retire these credits by resubmitting its GSF 0100 report(s) for each applicable year, and identifying the number of sulfur credits that it is retiring in the “expired” field of the report(s). Respondent shall submit a cover letter with each GSF 0100 report that it resubmits, which identifies the number of sulfur credits that it is retiring and the facility that generated the sulfur credits, along with a statement that it is retiring the sulfur credits pursuant to the enforcement obligation in the Administrative Settlement Agreement AED/MSEB # 8043. Respondent agrees to never use, bank, or transfer to another person the sulfur credits retired pursuant to this Paragraph.

36. Respondent informed and represented to the EPA that as of October 2013 going forward it would no longer generate sulfur credits at any of its oxygenate blending facilities.
37. Respondent agrees that it will only use the 5,527,851,330 sulfur credits that it generated at its oxygenate blending facilities in 2008 and the 6,202,814,940 sulfur credits that it generated at its oxygenate blending facilities in 2009 for compliance at Phillips 66-owned facilities (including any facilities owned by a joint venture in which Phillips 66 has at least a 50 percent interest) that have a sulfur credit deficit.
38. Respondent agrees to submit a written notification to the EPA within five days of surrendering the sulfur credits as required by Paragraph 35. The notification must include the following information: (1) the number of sulfur credits surrendered; (2) the date that the sulfur credits were surrendered; and (3) the contact name(s) and phone number(s) of the person(s) at the EPA who Phillips 66 worked with to surrender the sulfur credits. Respondent should mail the notification to the following address:

United States Environmental Protection Agency  
Attn: Air Enforcement Division Director  
1200 Pennsylvania Avenue, NW, Mail Code – 2242A  
Washington, DC 20460

and e-mail the notification to Tahani Ann Rivers at [rivers.tahani@epa.gov](mailto:rivers.tahani@epa.gov).

39. Respondent agrees to pay a civil penalty of \$500,000 (EPA Penalty) to the United States of America within 30 calendar days of the effective date of this ASA, as defined in Paragraph 43 of this ASA, 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. 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](http://www.epa.gov/cfo/finservices/payment_instructions.htm)



- b. Respondent may make an online payment through the Department of the Treasury by visiting [WWW.PAY.GOV](http://WWW.PAY.GOV). In the “Search Public Forms” field, enter “SFO 1.1”, click “EPA Miscellaneous Payments – Cincinnati Finance Center” and complete the “SFO Form Number 1.1.”
- c. Identify each and every payment with “AED/MSEB # 8043”; and
- d. Within 24 hours of payment, email proof of payment to Tahani Ann Rivers at [rivers.tahani@epa.gov](mailto:rivers.tahani@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 # 8043”).

**Stipulated Penalties:**

40. Respondent shall pay stipulated penalties of \$1,000 per day for failure to timely pay the EPA Penalty by the penalty due date, or provide proof thereof, pursuant to Paragraph 39, or for failure to comply with the sulfur credit requirements and limitations in Paragraphs 35 and 38.
41. Stipulated penalties under Paragraph 40 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 39 of this ASA.

**General Provisions:**

42. The 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.

43. This ASA becomes effective upon the date of the last signature below (effective date of the ASA), at which time an electronic copy of the fully executed ASA will be returned to Respondent.
44. The provisions of this ASA shall apply to, inure to the benefit of, and be binding upon Respondent, its agents, assigns, or successors.
45. Notwithstanding any other provision of this ASA, upon default or failure of Respondent to comply with the terms of this ASA, the EPA may refer this matter to the United States Attorney General for collection pursuant to CAA Section 205(c), 42 U.S.C. § 7524(c), commence an action to enforce this ASA or to recover the civil penalty pursuant to CAA Section 205, 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, other statutes of limitation, or other provisions limiting actions as a result of the passage of time. Respondent acknowledges that its tax identification number may be used for the purpose of collecting or reporting any delinquent monetary obligation arising from this ASA. *See* 31 U.S.C. § 7701.
46. 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.
47. 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.
48. The validity, enforceability, and construction of all matters pertaining to this ASA shall be determined in accordance with applicable federal law.

49. This ASA is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to the EPA relating to its compliance with the CAA Section 211, and 40 C.F.R. Part 80.
50. 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 Section 211 of the Act, 42 U.S.C. § 7545, 40 C.F.R. Part 80, and other provisions of law.

**Effect of ASA:**

51. This ASA shall be deemed to resolve the EPA's civil claims for the violations alleged in Paragraphs 17 to 32. 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 39 and upon full compliance with the sulfur credit retirement requirements in Paragraphs 35 and 38. 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.

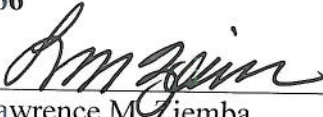
SIGNATURES ON FOLLOWING PAGES



*Administrative Settlement Agreement – In the Matter of Phillips 66  
AED/MSEB # 8043*

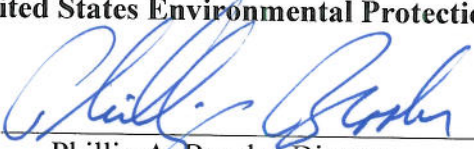
The following agree to the terms of this ASA:

**Phillips 66**

By:  Date: 2-26-2014  
Lawrence M. Ziembra *ASA*  
Executive VP, Refining  
Phillips 66 Company

Phillips 66 Company Federal Tax Identification Number: 37-1652702

**United States Environmental Protection Agency**

By:  \_\_\_\_\_

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

Date: 2/27/2014