

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

)	
In the Matter of:)	
)	Administrative Settlement Agreement
CountryMark Refining and Logistics, LLC)	
)	AED/FEB #CAA-19- 8407
Respondent.)	
)	

This Administrative Settlement Agreement (ASA) is made and entered into by and between the United States Environmental Protection Agency (EPA) and CountryMark Refining and Logistics, LLC (Respondent or CountryMark), regarding Respondent's compliance with the requirements of the Clean Air Act (CAA) and the regulations promulgated thereunder at 40 C.F.R. Part 80, Subpart L (Gasoline Benzene regulations).

Purpose:

1. The purpose of this ASA is to resolve alleged noncompliance by Respondent with the requirements of the CAA and the Gasoline Benzene regulations to measure conventional gasoline fuel parameters using Performance-based Analytical Test methods.

Statutory and Regulatory Authority:

2. The EPA promulgated the Gasoline Benzene regulations pursuant to Section 211(c) of the CAA, 42 U.S.C. § 7545(c).
3. The Gasoline Benzene regulations are part of a comprehensive national program designed to reduce hazardous air pollutants, also known as air toxics, from mobile sources.

4. The Gasoline Benzene regulations require refiners and importers meet an annual average gasoline benzene content standard of 0.62 percent by volume (vol%). 40 C.F.R. § 80.1230.
5. Beginning in 2011, the Gasoline Benzene regulations allow refiners and importers to generate standard gasoline benzene credits for over complying with the 0.62 vol% benzene standard. 40 C.F.R. § 80.1290.
6. The Gasoline Benzene regulations at 40 C.F.R. § 80.1290(c) provide that the number of standard benzene credits generated shall be calculated for each applicable averaging period by: (1) taking the annual average benzene standard, per 40 C.F.R. § 80.1230(a), of 0.62 volume percent; (2) subtracting the average benzene concentration of gasoline produced at the refinery during the averaging period, per 40 C.F.R. § 80.1238; (3) dividing the results from steps 1 and 2 by 100; and (4) multiplying the results from step 3 by the total volume of gasoline produced at the refinery during the averaging period.
7. 40 C.F.R. § 80.1347 details the sampling and testing requirements for refiners and importers. § 80.1347(a)(1) provides that the sampling and testing requirements in 40 C.F.R. Part 80, Subpart D for reformulated gasoline shall continue to apply to reformulated gasoline, and shall be extended to conventional gasoline to complying with the benzene requirements of 40 C.F.R. Part 80, Subpart L.
8. 40 C.F.R. § 80.1347(a)(3)(i) provides that beginning January 1, 2016, each sample shall be tested in accordance with the Performance-based Analytical Test Method Approach regulations specified at § 80.47 to determine its benzene concentration for compliance with the requirements of 40 C.F.R. Part 80, Subpart L.

9. The Performance-based Analytical Test Method Approach regulations establish performance criteria for accuracy and precision with use of analytical test methods. 40 C.F.R. § 80.47
10. Beginning January 1, 2016, the Performance-based Analytical Test Method Approach regulations established Accuracy and Precision Statistical Quality Control requirements for instruments used to make measurements for the Voluntary Consensus Standard Based Method-Defined Fuel Parameters. 40 C.F.R. § 80.47(o).
11. 40 C.F.R. § 80.47(o)(1)(i) requires that every facility must conduct tests of every instrument with a commercially available check standard as defined in ASTM D6299 at least three times a year using good laboratory practices to ensure the accuracy of the instruments.
12. 40 C.F.R. § 80.47(o)(2)(i) requires that every facility must conduct tests of every instrument with a quality control material as defined in paragraph 3.2.8 in ASTM D6299 either once per week or once per every 20 production tests, whichever is more frequent to ensure the precision of the instruments.
13. The CAA, under section 211(d), provides for civil penalties for any person who violates regulations prescribed under, *inter alia*, section 211(c) of the CAA. 42 U.S.C. § 7545(d)(1).

Background:

14. Respondent's refinery facility is located at 1200 Refinery Road Mt. Vernon, IN 47620, and it has a processing capacity of 30,000 barrels of crude oil per day. [REDACTED]

15. Respondent informed the EPA that in calendar years 2016, 2017, and until September 2018 Respondent's average benzene content was below 0.62 volume percent.
16. Respondent informed the EPA that a third-party auditor, hired by a benzene credit purchaser, informed Respondent that in calendar years 2016 and 2017, and until September 2018, Respondent did not complete the Accuracy and Precision Statistical Quality Control required testing of instruments.
17. Respondent informed the EPA that it misread the Performance-based Analytical Test Method Approach regulations and believed it was exempt from the Accuracy and Precision Statistical Quality Control required testing of instruments.
18. Respondent informed the EPA that it sent composite fuel samples to an independent laboratory in calendar years 2016, 2017, 2018 to test a number of parameters, including benzene content.
19. Respondent informed the EPA that it began a continuous program of implementing the Accuracy and Precision Statistical Quality Control requirements on September 24, 2018.
20. Based on information Respondent provided, the EPA alleges that between January 1, 2016 and September 24, 2018, Respondent violated 40 C.F.R. §§ 80.47(o) and 80.1347(a)(3)(i) by failing to complete the Accuracy and Precision Statistical Quality Control testing required for instruments used to test the benzene content of gasoline.
21. 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:

22. 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.

23. Respondent agrees to enter the necessary number of remedial action transactions, with retire reason code 140 (Invalid Credit), in the EPA Moderated Transaction System (EMTS) to reduce its gasoline benzene credit balance [REDACTED] within 30 days of the effective date of this ASA. Respondent agrees to include “#CAA-19-8407” in the Transaction Comment section for each remedial action transaction.

24. Respondent agrees to submit a written notification to the EPA within five days of making the adjustments specified in Paragraph 23. The notification should include the following information: (1) a description of the remedial action transactions (including the EMTS transaction IDs), and how each complied with Paragraph 23 and (2) the contact name, phone number, title, and signature (scanned version to the email address below with original hardcopy mailed to the address below) of a responsible official certifying that Respondent had not used or transferred any of the retired CountryMark gasoline benzene credits prior to performing the adjustments specified in Paragraph 23. Respondent should send this notification to support@epamts-support.com and the following addresses:

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

U.S. Environmental Protection Agency
Attn: Matthew Kryman, Attorney-Advisor
OECA/AED/Fuels Enforcement Branch (8MSU)
1595 Wynkoop Street
Denver, CO 80202

25. Respondent agrees to pay a civil penalty of \$226,200 to the United States of America within thirty (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. Respondent agrees to pay the amount by either:

- a. Certified check or cashier's check payable to the "United States of America," and mailed via the United States Postal Service to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
ATTN: #CAA-19- 8407

Simultaneously, a scanned copy of the check shall be e-mailed to Matthew Kryman at kryman.matthew@epa.gov. This check shall be identified with the case number and Respondent's name; or

- b. Respondent may make an online payment through the Department of the Treasury by visiting 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." Within twenty-four hours of payment, Respondent shall e-mail a scanned copy of the online payment receipt to Matthew Kryman at kryman.matthew@epa.gov.

Stipulated Penalties:

26. Respondent shall pay stipulated penalties of \$1,000 per day for failure to timely pay the penalty, or provide proof thereof, pursuant to Paragraph 27.

General Provisions:

27. This ASA becomes effective upon the date executed by the EPA (effective date of the ASA), at which time a copy will be returned to Respondent.
28. 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 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.
29. 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.
30. 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.
31. The validity, enforceability, and construction of all matters pertaining to this ASA shall be determined in accordance with applicable federal law.
32. 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 Performance-based Analytical Test Method Approach regulations.

Effect of ASA:

33. Upon completion of the terms of this ASA, the alleged violations described shall be deemed terminated and resolved. Nothing herein shall limit the right of the EPA to proceed against Respondent in the event of default or noncompliance with this ASA, for violations of CAA section 211, 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 the ASA. This ASA in no way affects or relieves Respondent of responsibility to comply with other state, federal, or local laws or regulations.

Administrative Settlement Agreement – In the Matter of CountryMark Refining and Logistics, LLC - #CAA-19- 8407

The following agree to the terms of this ASA:

CountryMark Refining and Logistics, LLC

By: 

Date: 4/5/19

Typed or Printed Name: Matthew L. Smorch

Typed or Printed Title: Vice President of Refining and Logistics

Federal Tax Identification Number: 35-2157262

Administrative Settlement Agreement – In the Matter of CountryMark Refining and Logistics, LLC - #CAA-19- 8407

United States Environmental Protection Agency

By: 

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

Date: 4/12/2019