

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:

Valero Energy Corporation,
Respondent.

Administrative Settlement
Agreement
AED-17-8346

This Administrative Settlement Agreement (ASA) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Valero Energy Corporation (Respondent) having an office at One Valero Way, San Antonio, TX 78249.

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 1,851,693 RINs, which were generated by Montgomery Recycling Corporation (Montgomery Recycling), to meet its 2011 RVO. These biomass-based diesel RINs are identified in Attachment A (the Subject RINs).
13. EPA alleges that the Subject RINs are invalid because Montgomery Recycling generated these RINs without producing the applicable renewable fuel volume.
14. Respondent represents that it implemented remedial actions by removing the Subject RINs from all applicable RFS2 annual compliance reports, replacing the Subject RINs that were needed to meet its RVO, and resubmitting corrected reports 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 alleges 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 2011 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. In March of 2012, and January of 2013, EPA published Interim Enforcement Response Policies to resolve violations arising from the use of invalid 2010, 2011 and 2012 biomass-based diesel RINs (IERPs). The IERPs cap penalties for qualifying use violations in connection with invalid 2010, 2011 and 2012 biomass-based diesel RINs at \$350,000. Since Respondent has already paid a civil penalty of \$350,000 to resolve violations in connection with invalid 2010, 2011, and/or 2012 biomass-based diesel RINs, Respondent is not required to pay any additional penalties to resolve the violations described in this ASA.
20. Respondent acknowledges that this ASA will be available to the public and agrees that it does not contain any confidential business information.

General Provisions:

21. 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.
22. 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, 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 the passage of time.

23. 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.
24. 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.
25. The validity, enforceability, and construction of all matters pertaining to this ASA shall be determined in accordance with applicable federal law.
26. This ASA is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA in this ASA.
27. This ASA is effective upon execution by the Parties, and may be signed in counterparts, electronically transmitted or otherwise delivered, each of which will be deemed an original.

Effect of ASA:

28. This ASA is deemed to resolve the EPA's civil claims for the violations alleged in Paragraph 17 and all other violations of 40 C.F.R. Part 80, Subpart M, arising from

Respondent's use of Montgomery Recycling RINs generated from April 19, 2011, through December 8, 2011, to meet its RVO.

29. The resolution of claims set forth in Paragraph 28 shall take effect on the date this ASA is executed by EPA. 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:
Valero Energy Corporation
AED-17-8346*

The following agree to the terms of this ASA:

Valero Energy Corporation

By:  Date: May 4, 2017

Typed or Printed Name: Elizabeth Swartha

Typed or Printed Title: Sr. Managing Counsel

Federal Tax Identification Number: 74-1828067

*Administrative Settlement Agreement – In the Matter of:
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United States Environmental Protection Agency

By: 

Date: 5/23/2017

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