

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

		In the Matter of:)	
)	
		Deer Park Refining Limited Partnership,)	Administrative Settlement Agreement
		Motiva Enterprises LLC, and Equilon)	AED/MSEB # 8069
		Enterprises LLC d/b/a Shell Oil Products US)	
)	
		Respondents.)	
)	

This Administrative Settlement Agreement (ASA) is between the United States Environmental Protection Agency and Deer Park Refining Limited Partnership, Motiva Enterprises LLC, and Equilon Enterprises LLC d/b/a Shell Oil Products US (collectively referred to as Respondents), regarding Respondents' compliance with Section 211 of the Clean Air Act (CAA) and the regulations promulgated thereunder at 40 C.F.R. Part 80. Respondents own and operate petroleum refineries and terminals in the U.S. The purpose of this ASA is to resolve alleged noncompliance by Respondents with the requirements of Section 211 of the CAA and the regulations promulgated thereunder at 40 C.F.R. Part 80. The EPA's delegated official and signatory to this Agreement is the Director of the Air Enforcement Division of the Office of Civil Enforcement of the Office of Enforcement and Compliance Assurance.

Governing Law:

1. "During the 1992 and later high ozone seasons no person ... shall sell, offer for sale, dispense, supply, offer for supply, transport or introduce into commerce gasoline whose Reid vapor pressure exceeds the applicable standard." 40 C.F.R. § 80.27(a)(2).
2. The fuels regulations require that fluorescent indicator adsorption ASTM D-1319 method for aromatics testing must be correlated with test method ASTM D 5769-98. 40 C.F.R. § 80.46(f)(1), 40 C.F.R. § 80.46(f)(3)(i)(ii), 40 C.F.R. § 80.46(h).

3. Olefin content of reformulated gasoline must be determined by using ASTM standard method D1319. 40 C.F.R. § 80.46(b). ASTM standard method D1319 is incorporated by reference in 40 C.F.R. § 80.46(h).
4. Any refiner or importer 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 40 C.F.R. § 80.46, with exceptions not at issue here. 40 C.F.R. § 80.101(i)(1)(i)(A).
5. Distillation parameters shall be determined using ASTM standard method D86 (incorporated by reference). 40 C.F.R. § 80.46(d), 40 C.F.R. § 80.46(h).
6. 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). 40 C.F.R. § 80.105(a)(5)(v).
7. 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. 40 C.F.R. § 80.370(a)(7)(iv).
8. 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. 40 C.F.R. § 80.365(a)(2)(iii).
9. On each occasion when any person transfers custody or title to any conventional gasoline, the transferor shall provide to the transferee product transfer documents 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.” 40 C.F.R. § 80.106(a)(1)(vi).

10. “Any refiner for each refinery, or any importer, shall exclude from its compliance calculations... [g]asoline that is exported.” 40 C.F.R. § 80.101(e)(4).
11. “Any refiner or importer of conventional gasoline must register with the Administrator in accordance with the provisions specified at § 80.76.” 40 C.F.R. § 80.103.
12. “Any parties in the gasoline distribution network shall maintain records containing the information as required by this section.” 40 C.F.R. § 80.104.
13. “Beginning June 1, 2006, or, for a refiner or importer, the first compliance period in which the refiner or importer is generating early credits under § 80.531(b) or (c), whichever is earlier, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports motor vehicle diesel fuel subject to the provisions of this subpart, must keep...[t]he results of the tests for cetane index” 40 C.F.R. § 80.592(a)(2).
14. “On request by EPA, the records required in this section must be made available to the Administrator or the Administrator’s representative.” 40 C.F.R. § 80.592(e).
15. “No person shall ... sell, offer for sale ... motor vehicle diesel fuel ... that does not comply with the applicable standards ... or any other product requirements under this subpart I” 40 C.F.R. § 80.610(a)(1).
16. “All motor vehicle diesel fuel is subject to the following per-gallon standards: 15 parts per million (ppm) maximum” 40 C.F.R. § 80.520(a)(1).
17. “Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary’s corporate, trade, or brand name appeared at a facility where a violation of § 80.610(a) or (b) occurred, is deemed in violation of § 80.610(a) or (b), as applicable.” 40 C.F.R. § 80.612(a)(3).
18. “From June 1, 2006, through September 30, 2010, any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing, motor vehicle diesel fuel subject to the 500 ppm sulfur standard of § 80.520(c), must prominently and conspicuously display in the immediate area of each pump stand from which motor vehicle fuel subject to the 500 ppm sulfur standard is

offered for sale or dispensing, the following legible label, in block letters of no less than 24-point bold type, printed in a color contrasting with the background: LOW SULFUR HIGHWAY DIESEL FUEL (500 PPM SULFUR MAXIMUM) WARNING Federal law prohibits use in model year 2007 and later highway vehicles and engines. Its use may damage these vehicles and engines.” 40 C.F.R. § 80.570(b).

19. Fuel or fuel additive manufacturers are prohibited from first introducing into commerce, or increasing the concentration in use of, any fuel or fuel additive for use in motor vehicles which is not substantially similar to that utilized in the certification of motor vehicles or engines under Section 206 of the Act. CAA Section 211(f)(1)(B). Fuel manufacturers may apply for a waiver of this prohibition. CAA Section 211(f)(4).
20. “Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary’s corporate, trade, or brand name appeared at a facility where a violation of § 80.610(a) or (b) occurred, is deemed in violation of § 80.610(a) or (b), as applicable.” 40 C.F.R. § 80.612(a)(3).

Factual Background:

21. Respondents are refiners. A refiner is any person who owns, leases, operates, controls, or supervises a refinery. 40 C.F.R. § 80.2(i). A refinery is 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).
22. Respondents are persons. A person 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).
23. In August and September of 2009 the EPA, along with its contractor Bionetics Corporation, conducted a compliance review of Respondents discussed above at: (1) Respondents’ Headquarters in Houston, Texas, on August 24-25, 2009; (2) the Deer Park Refinery in Texas on August 26-27,

2009; (3) the Convent Refinery in Louisiana on September 15-16, 2009; and (4) the Norco Refinery in Louisiana on September 16-17, 2009. Specifically, the MSEB and Bionetics audited the period from 2006 – 2008, and for part of 2009, where records were available.

24. In August and September 2007, the EPA conducted an inspection to evaluate Respondents' compliance at a Shell-branded retail location in Vienna, Virginia. In February 2008, the EPA conducted another inspection to evaluate Respondents' compliance at an Alexandria, Virginia, Shell-branded retail location.
25. In a letter dated August 10, 2009, Respondents disclosed to the EPA, Region 10, instances in which it failed to comply with the conventional gasoline regulations at 40 C.F.R. §§ 80.101, 80.103, 80.104, 80.105 and 80.106.
26. In a letter dated September 14, 2011, Respondents disclosed to the EPA, Region 6, and the MSEB possible reporting violations at the Norco refinery.

Alleged Violations of Law:

27. The EPA alleges that Respondents violated 40 C.F.R. § 80.46(f)(1), 40 C.F.R. § 80.46(f)(3)(i)(ii), and 40 C.F.R. § 80.46(h) at the Puget Sound Refinery throughout 2006, 2007, and through April of 2008, by using fluorescent indicator adsorption ASTM D-1319 for aromatics testing without correlating it with the ASTM D 5769-98 test method.
28. The EPA alleges that Respondents violated 40 C.F.R. § 80.46(b) and 40 C.F.R. § 80.46(h) at the Deer Park Refinery by failing to properly follow the standard method, ASTM D1319-03^{e1} to determine the olefin content of a batch of gasoline produced during the August, 2009, audit of the refinery. Specifically, the dyed gel used was not stored under an atmosphere of nitrogen. In addition, during the marking of the zones, the technician made both sets of markings in the same order. The method requires marking the zones for the second set in reverse order from the first set. *See* ASTM D1319-03^{e1} paragraphs 7.2, 10.6.

29. The EPA alleges that Respondents violated 40 C.F.R. § 80.101(i)(1)(i)(A), 40 C.F.R. § 80.46(d) and 40 C.F.R. § 80.46(h) by failing to properly follow the ASTM standard method D 86-07 pertaining to distillation for 28 batches of gasoline produced at the Port Arthur Refinery during 2008. ASTM standard method D 86-07 requires that the time from 5 mL of liquid residue in the flask to the final boiling point shall be no more than five minutes. If it does exceed five minutes, then the test must be repeated with the appropriate modification of the final heat adjustment. At Port Arthur, the time recorded from 5 mL of residue to the final boiling point exceeded the maximum time of five minutes, as specified in Table 5 of ASTM D-86-07, for each batch. Respondents exceeded this requirement by a range of seven seconds to four minutes and 59 seconds.
30. The EPA alleges that Respondents violated 40 C.F.R. § 80.105(a)(5)(v), 40 C.F.R. § 80.101(i) and 40 C.F.R. § 80.370(a)(7)(iv) at the Port Arthur Refinery, by misreporting the sulfur content for Batch 2008-524. Batch 2008-524 was 3,302,070 gallons of regular conventional gasoline, and was produced on October 20, 2008. Respondents reported to the EPA that the sulfur content was 15 parts per million. The raw data in the batch file show sulfur results of 0.00773 weight % (77.3 ppm) and 0.00255 weight percent (25.5 ppm).
31. The EPA alleges that Respondents violated 40 C.F.R. § 80.365(a)(2)(iii) at the Norco Refinery by failing to retain the original test results for sulfur testing for Batch 2008-293.
32. The EPA alleges that Respondents violated 40 C.F.R. §§ 80.105(a)(5)(v) and 80.101(i) at the Port Arthur Refinery by misreporting the RVP test results for conventional gasoline Batch 287 produced on June 10, 2006. Respondents reported to the EPA that the RVP for that batch was 9.01 psi. The Grabner Vapor Pressure Analyzer RVP raw data report for Batch 287 was 9.09 psi.
33. The EPA alleges that Respondents violated 40 C.F.R. §§ 80.105(a)(5)(v) and 80.101(i) at the Port Arthur Refinery by misreporting the RVP test results for 2008 conventional gasoline Batch 429.

Respondents reported to the EPA that the RVP for that batch was 9.02 psi. The Grabner Vapor Pressure Analyzer recorded RVPs of 9.17 psi, 9.18 psi, 9.21 psi and 9.24 psi.

34. The EPA alleges that Respondents produced the following batches in violation of 40 C.F.R.

§ 80.27(a)(2):

- a. On June 10, 2006, Respondents produced Batch 287 at its Port Arthur Refinery and shipped the batch during the high ozone season to areas subject to the 9.0 psi RVP standard at 40 C.F.R. § 80.27(a)(2)(i). This batch of conventional gasoline was 3,295,284 gallons. The Grabner Vapor Pressure Analyzer recorded RVPs of 9.09 psi for this batch.
- b. On August 20, 2008, Respondents produced Batch 429 at its Port Arthur Refinery and shipped the batch for use during the high ozone season to areas subject to the 9.0 psi RVP standard at 40 C.F.R. §§ 80.27(a)(2)(i). This batch of conventional gasoline was 878,969 gallons. The Grabner Vapor Pressure Analyzer recorded RVPs of 9.17 psi, 9.18 psi, 9.21 psi and 9.24 psi for this batch.
- c. Respondents combined into the same shipment on the Colonial Pipeline Batch 241, with an RVP of 10.82 psi, Batch 242 with an RVP of 11.14 psi, Batch 440, with an RVP of 11.17 psi, Batch 444, with an RVP of 11.28 psi, and Batch 404, with an RVP of 11.47 psi. 29,555 gallons from this shipment were released from the Meridian, Mississippi, terminal on September 15. Gasoline sold in this area must meet the 9.0 RVP standard at 40 C.F.R. § 80.27(a)(2)(ii).

35. The EPA alleges that Respondents violated 40 C.F.R. § 80.106(a)(1)(vi) because from early 2008 until April 2008, Respondents at the Convent Refinery transferred custody or title of conventional gasoline, in which 27 product transfer documents did not 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.”

36. The EPA alleges that Respondents violated 40 C.F.R. § 80.101(e)(4), which provides that “[a]ny refiner for each refinery, or any importer, shall exclude from its compliance calculations gasoline that is exported.” On December 3, 2006, the Norco Refinery exported Batch 564 of conventional gasoline to Mexico and included the batch in its compliance calculations.
37. The EPA alleges that Respondents violated 40 C.F.R. §§ 80.101, 80.103, 80.104, 80.105, 80.106 relating to its importation of a conventional premium gasoline shipment received in July 2006, in which it is unable to find a batch report or an annual report related to this shipment. Respondents disclosed these violations to the EPA in an August 10, 2009, letter.
38. The EPA alleges that Respondents violated 40 C.F.R. §§ 80.592(a)(2) and 80.592(e) by failing to keep the results of tests for cetane index at the Norco Refinery. In a September 14, 2011, letter Respondents disclosed that it failed to retain the required records after the data was entered into Motiva’s Laboratory Information Management System (LIMS) during certain time periods before July 2011.
39. The EPA alleges that Respondents violated 40 C.F.R. § 80.610(a)(1) and 40 C.F.R. § 80.520(a)(1). In July and August 2007, Vienna Shell offered for sale and sold motor vehicle diesel fuel that had an average sulfur content of 304 ppm, which is above the motor vehicle diesel fuel 15 ppm standard. In February 2008, Alexandria Shell offered for sale and sold motor vehicle diesel fuel that had a sulfur content of 20.8 ppm, which is above the motor vehicle diesel fuel 15 ppm standard. Respondents are liable for these violations under 40 C.F.R. § 80.612(a)(3).
40. The EPA alleges that Respondents violated 40 C.F.R. § 80.570(b) and 40 C.F.R. § 80.610(a)(1). 40 C.F.R. § 80.570(b) states that “[f]rom June 1, 2006, through September 30, 2010, any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing, motor vehicle diesel fuel subject to the 500 ppm sulfur standard of § 80.520(c), must prominently and conspicuously display in the immediate area of each pump stand from which motor vehicle fuel subject to the 500 ppm sulfur standard is offered for sale or dispensing, the following legible label,

in block letters of no less than 24-point bold type, printed in a color contrasting with the background: LOW SULFUR HIGHWAY DIESEL FUEL (500 PPM SULFUR MAXIMUM) WARNING Federal law prohibits use in model year 2007 and later highway vehicles and engines. Its use may damage these vehicles and engines.” 40 C.F.R. § 80.610(a)(1) states that “No person shall ... sell, offer for sale ... motor vehicle diesel fuel ... that does not comply with the applicable standards ... or any other product requirements under this subpart I... .”

- a. For at least part of July and part of August 2007, Chahel Enterprises, Inc. d/b/a Vienna Shell, located at 252 Maple Avenue West in Vienna, Virginia (Vienna Shell), mislabeled pumps that contained low sulfur diesel with ultra-low sulfur diesel labels. Shell is liable for this violation under 40 C.F.R. § 80.612(a)(3).
- b. In February 2008, a Shell Station located at 3216 Jefferson Davis Highway in Alexandria, Virginia (Alexandria Shell), mislabeled pumps 9 and 10 that contained low sulfur diesel with low sulfur diesel labels that did not comply with the explicit regulatory language requirements. Shell is liable for this violation under 40 C.F.R. § 80.612(a)(3).

41. The EPA alleges that Respondents violated Section 211(f)(1)(B) of the Act by first introducing fuel into commerce in which it blended more than 10 volume percent ethanol with gasoline between January 28, 2012, and February 1, 2012, at the Motiva Enterprises LLC, Sewaren, New Jersey Terminal. The EPA determined that Respondents produced 716,225 gallons of finished gasoline with an average of about 23.0% ethanol at its Sewaren terminal, and introduced this fuel into commerce. This fuel was not substantially similar to gasoline utilized in the certification of motor vehicles or engines under Section 206 of the Act, and was not covered by a waiver under Section 211(f)(4) of the Act. Respondents are liable for these violations because it first introduced fuel into commerce that was not substantially similar to fuel used in the certification of motor vehicles or engines under Section 206 of the Act.

Terms of the Agreement and Civil Penalty:

42. Respondents agree to pay a civil penalty of \$900,000 (EPA Penalty) to the United States of America within 30 calendar days of the date the EPA executes 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. Respondents agree 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://www2.epa.gov/financial/makepayment>;
 - c. Identify each and every payment with “AED/MSEB # 8069”; and
 - d. Within 24 hours of payment, email proof of payment to Tahani Ann Rivers at 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 in full, and identified with “AED/MSEB # 8069”).

Stipulated Penalties:

43. Respondents shall pay stipulated penalties of \$1,000 per day for failure to timely pay the EPA Penalty by the penalty due date, as required by paragraph 42, or provide proof thereof, pursuant to Paragraph 42.
44. Stipulated penalties under Paragraph 43 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 42 of this ASA. Respondents agree to pay the stipulated penalties not more than 30 days after receipt of a written demand by the EPA.

General Provisions:

45. The EPA and Respondents, 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, Respondents make no admission of law with respect to any of the allegations set forth in paragraphs 27 to 41.

46. This ASA becomes effective the date the EPA executes this agreement, at which time an electronic copy of the fully executed ASA will be provided to Respondents.
47. The provisions of this ASA shall apply to, inure to the benefit of, and be binding upon Respondents, and any agents, assigns, or successors.
48. Notwithstanding any other provision of this ASA, upon default or failure of Respondents 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. Respondents specifically agree 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. Respondents expressly waive its' rights 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. Respondents acknowledge 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.
49. Respondent acknowledges that this ASA constitutes an enforcement action for purposes of considering Respondents' compliance history in any subsequent enforcement action.
50. Respondent acknowledges that this ASA will be available to the public and agrees that it does not contain any confidential business information.
51. The Parties represent that the individual or individuals executing this ASA on behalf of each Respondent is authorized to do so and that such execution is intended and is sufficient to bind Respondents, its agents, assigns, or successors.

52. Respondents waive 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.
53. Respondents waive any rights they may possess at law or in equity to challenge the authority of the EPA to bring a civil action governed by federal law in a United States District Court to enforce this ASA and to seek additional remedies for such breach.
54. The validity, enforceability, and construction of all matters pertaining to this ASA shall be determined in accordance with applicable federal law.
55. This ASA is contingent upon the truthfulness, accuracy and completeness of Respondents' disclosures and representations to the EPA relating to its' compliance with CAA Section 211, and 40 C.F.R. Part 80.
56. 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(c) and 211 of the Act, 42 U.S.C. §§ 7524(c) and 7545, 40 C.F.R. Part 80, and other provisions of law.
57. This ASA 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 hereof.
58. This ASA 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 may be detached from any counterpart and attached to any counterpart of this ASA. In the event that any signature page is

delivered by facsimile transmission or by email delivery of a .pdf file, that signature creates a valid and binding obligation of the party executing this ASA with the same force and effect if the facsimile or email signature page were an original.

Effect of ASA:

59. This ASA shall be deemed to resolve the EPA's civil claims for the violations alleged in Paragraphs 27 to 41. 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 42. Nothing herein shall limit the right of EPA to proceed against Respondents 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 Respondents of responsibility to comply with other state, federal, or local laws or regulations.

SIGNATURES ON FOLLOWING PAGES

The following agree to the terms of this ASA:

Deer Park Refining Limited Partnership

By:  Date: Dec 10, 2014

Typed or Printed Name: 

Typed or Printed Title: GM - DEER PARK SITE

Federal Tax Identification Number: 76-0391427

Motiva Enterprises LLC

By: 

Date: 12/9/14

Typed or Printed Name: 

Typed or Printed Title: General Counsel

Federal Tax Identification Number: 76-0262490

Equilon Enterprises LLC d/b/a Shell Oil Products US

By: [REDACTED] Date: Dec 10, 2014

Typed or Printed Name: [REDACTED]

Typed or Printed Title: GENERAL MANAGER - SITERU PUGET SOUND REFINERY

Federal Tax Identification Number: 52-2074528

United States Environmental Protection Agency

By: 

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

Date: 1/16/2015