

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

In the Matter of:)

Business Express Airlines, Inc.)

Respondent.)

SETTLEMENT AGREEMENT

AED/MSEB - 5050

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Business Express Airlines, Inc, 4333 Amon Carter Boulevard, Forth Worth, Texas 76155, (hereafter, "Respondent").

Preliminary Statement

1. During March 1999, Respondent reported that it had violated section 211(g) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(g), and the regulations issued thereunder at 40 C.F.R. Part 80 ("regulations"), and requested the application of EPA's December 22, 1995, policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" ("EPA's Self-Disclosure Policy").

2. The diesel misfueling provision of the Act provides that no person may introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 weight percent. In addition, the diesel fuel regulations prohibit any person from dispensing, selling, supplying, offering for sale or supply, transporting, or introducing into commerce diesel fuel for use in motor vehicles unless the diesel fuel has a sulfur concentration no greater than 0.05 weight percent. The Act also subjects violators to a civil penalty of \$27,500 per day for each violation plus the amount of economic benefit or savings resulting from the violation.

3. EPA's Self-Disclosure Policy allows EPA to not seek a gravity-based (i.e., non-economic benefit) penalty where the violator finds the violation through voluntary environmental audits or efforts that reflect due diligence, and promptly discloses and expeditiously corrects the violation.

4. The Self-Disclosure Policy also imposes important safeguards to prevent abuses of its use. These safeguards require: (1) prompt disclosure of the violation, (2) expeditious correction of the violation, (3) action to prevent recurrence of the violation, and (4) action to remedy any environmental harm that occurred as a result of the violation. Additionally, certain violations are ineligible for consideration under the policy such as: (1) repeat violations, (2) violations that

caused actual harm, (3) violations that present imminent and substantial endangerment, and (4) violations that will allow companies to gain an economic advantage over competitors by delaying their investment in compliance.

5. 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 Agreement

6. The parties agree that the settlement of this matter is in the public interest and that this Settlement Agreement is the most appropriate means of resolving the matter.

7. The parties stipulate and agree to the following matters. It is further agreed that these stipulations are applicable to this Agreement and any enforcement or penalty proceeding arising out of this Agreement or the subject matter of this Agreement:

a. During March 1999, Respondent conducted a self-audit of all its domestic airport facilities and reported to EPA that it had violated the federal diesel fuels regulations at 40 C.F.R. § 80.29. In summary, Respondent reported using jet fuel A to fuel fourteen motor vehicles located at two airports. Jet fuel A, a fuel primarily intended for use in jet aircraft, has a sulfur content greater than 0.05 weight percent. As a result, use of jet fuel A to fuel motor vehicles constitutes a violation of section 211(g) of the Act and 40 C.F.R. § 80.29.

b. Respondent took prompt action to remedy the violations and prevent future violations. Respondent changed its practices for fueling its motor vehicles to ensure proper diesel fuel is used. Respondent certifies that it is now in full compliance with the diesel fuel provision of section 211(g) of the Act and 40 C.F.R. § 80.29.

c. 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.

8. EPA has determined to remit and mitigate the civil penalty to \$10,000 subject to successful completion of the terms of this Agreement.

a. Respondent agrees to pay \$10,000 to the United States of America within thirty days from the date that this Agreement is executed by EPA ("the due date"). Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717.

b. Respondent agrees to pay the amount by check payable to the "United States of America," and to mail the payment to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB - BEX Self-Audit

Respondent further agrees to mail a photocopy of the check to:

J. L. Adair, Attorney/Advisor
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
Air Enforcement Division (2242-A)
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460
Attn: AED/MSEB - BEX Self-Audit

9. Stipulated Penalties.

a. Time is of the essence to this Agreement. Upon the failure to timely perform pursuant to Paragraph 8 of this Agreement, Respondent agrees to pay a stipulated penalty of \$20,000. The parties further agree that upon such default or failure to comply, EPA may refer this matter to the United States Attorney General for collection pursuant to section 211(d) of the Act, 42 U.S.C. § 7545(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to section 211 of the Act; 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 violation of section 211 of the Act, 42 U.S.C. § 7545, and 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 passage of time.

10. This Agreement becomes effective upon the date accepted by EPA, at which time a copy will be returned to Respondent's attorney,

Mr. Brian A. King
M.D. 5675
P.O. Box 619616
Dallas/Ft. Worth, Texas 75261-9616..

11. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent is authorized to do so and that such execution is intended and is sufficient to bind Respondent.

12. 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.

13. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

14. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

15. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement; for violations of section 211 of the Act, 42 U.S.C. § 7545, which are not the subject matter of this Agreement; or for other violations of law; or with respect to other matters not within the scope of the Agreement. This Agreement in no way affects, or relieves Respondent of responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

Business Express Airlines, Inc.

by: *Neddy Stroud*
Vice President + General Counsel

Date: *2/8/00*

United States
Environmental Protection Agency

by: *Richard Buckheit Jr*

Bruce C. Buckheit, Director
Air Enforcement Division
Office of Regulatory Enforcement
Office of Enforcement and Compliance Assurance

Date: *2-25-00*