

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

|                                      |                      |
|--------------------------------------|----------------------|
| _____ )                              |                      |
| In the Matter of: )                  | ADMINISTRATIVE       |
| )                                    | SETTLEMENT AGREEMENT |
| Morgan Stanley Capital Group Inc., ) | AED/MSEB-7151        |
| Respondent. )                        |                      |

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Morgan Stanley Capital Group Inc., 1585 Broadway, 4<sup>th</sup> Floor, New York, New York 10036 (Respondent).

**Purpose:**

1. The purpose of this Agreement is to resolve alleged violations of Section 211 of the Clean Air Act (CAA), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80 (Fuels Regulations).

**Statutory Authority:**

2. Section 211 of the CAA, 42 U.S.C. § 7545, required EPA to promulgate regulations which require reformulated gasoline (RFG) and conventional gasoline (CG) to meet certain emission standards and imposed on refiners and importers a number of quality assurances, recordkeeping, and reporting requirements.
3. Section 211(d) of the CAA, 42 U.S.C. § 7545(d), provides that any person who fails to produce or import RFG or CG that comply with the standards, furnish any information, or conduct any required tests, is subject to a civil penalty of not more than \$32,500 for every day of such violation plus the amount of economic benefit or savings resulting from the violation.

**Regulatory Authority:**

4. 40 C.F.R. § 80.41(f) sets the Phase II complex model standards for RFG gasoline. The maximum per gallon standard for benzene content is 1.30 volume percent.
5. 40 C.F.R. § 80.65 provides that any refiner or importer shall, among other things, properly designate the gasoline it produces or imports, determine the value of each of the properties of each batch, conduct an annual attest audit to ensure compliance with the requirements, and exclude previously certified gasoline (PCG) for purposes of demonstrating compliance with the standards under 40 C.F.R. § 80.41.
6. 40 C.F.R. § 80.74 provides that all parties in the gasoline distribution network shall maintain certain records for five years, and shall provide the records to EPA upon request. The records include, among other things, (a) product transfer documentation (PTD) for all RFG or reformulated gasoline blendstock for oxygenate blending (RBOB) for which the party is the transferor or transferee; (b) sampling and testing information, such as the location, date, time, and for each sample collected, the identification of the person who collected the sample and the person who performed the testing, the results of the test, and the volume of gasoline associated with each test result; (c) PCG information, such as the results of the test to determine the properties, volume of the PCG, and records that reflect the storage and movement of the PCG within the refinery.
7. 40 C.F.R. § 80.75 provides that any refiner or importer shall submit quarterly reports to EPA for any gasoline treated as blendstock (GTAB), RFG or RBOB produced or imported. The quarterly report must include, among other things, the batch number, the date of production, the volume of the batch, the grade of gasoline produced, each designation of the gasoline

pursuant to 40 C.F.R. § 80.65, and the properties of the gasoline pursuant to 40 C.F.R. §§ 80.65 and 80.66. In the case of any gasoline classified as PCG, the identification of the PCG as such, the batch number assigned by the receiving refinery, the date of receipt, and the volume, properties, and designation of the batch.

8. 40 C.F.R. § 80.78(a)(i) provides that no person may, among other things, manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline represented as reformulated and intended for sale or use in any covered area unless each gallon of such gasoline meets the applicable benzene maximum standard specified in 40 C.F.R. § 80.41, and unless the PTD for such gasoline complies with the requirements of 40 C.F.R. § 80.77.
9. 40 C.F.R. § 80.77 provides that on each occasion when any person transfers custody or title to any RFG or RBOB, other than when gasoline is sold or dispensed for use in a motor vehicle at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee documents which include, among other things, the following information: (a) the name and address of the transferor; (b) the name and address of the transferee; (c) the volume of gasoline or RBOB which is being transferred; (d) the location of the gasoline at the time of transfer; (e) the date of the transfer; (f) the proper identification of the product as RFG or RBOB; and, (g) the proper identification as VOC-controlled for VOC-Control Region 1 or 2, or Not VOC-controlled, and if VOC-controlled, the VOC emissions performance minimum.
10. 40 C.F.R. § 80.104 provides that any refiner or importer shall maintain certain records for five years, and provide such records to EPA upon request. The records include, among other

things, the batch number, the volume of each batch; the date of production, importation, or receipt; and the PTD.

11. 40 C.F.R. § 80.106 provides that on each occasion when any person transfers custody or title to any CG, the transferor shall provide to the transferee documents which include, among other things, the name and address of the transferor, the name of the transferee, the volume of gasoline being transferred, the location of the gasoline at the time of transfer, and the date of transfer.

**Alleged Violations:**

12. On or about October 12 and November 28, 2005, Respondent provided written notification to EPA that it had distributed into commerce 1,266,804 gallons of RFG that failed to comply with the maximum benzene content standard of 1.30 volume percent per gallon as specified at 40 C.F.R. § 80.41. Respondent explained that the incident occurred immediately after Hurricane Katrina when there was a good faith effort by Respondent to deliver needed finished gasoline to the market.
13. During EPA's review of the self-disclosure, Respondent provided to EPA additional information and reports relating to other compliance issues. Based upon the information set forth in Respondent's self-disclosure and additional reports, EPA alleges that in 2005 Respondent failed to:
  - a. conduct the annual attest audit in a timely manner, as required by 40 C.F.R. §§ 80.65 and 80.125.
  - b. report the volume and properties of a batch of GTAB, as required by 40 C.F.R. § 80.75;
  - c. report a batch of RFG, as required by 40 C.F.R. § 80.75;

- d. provide laboratory analysis for five batches of PCG, as required by 40 C.F.R. § 80.74;
  - e. provide PTDs for CG and RFG or RBOB, as required by 40 C.F.R §§ 80.106 and 80.77, respectively.
14. By entering into this Agreement, Respondent neither admits nor denies that it has committed any of the alleged violations.

**Civil Penalty:**

15. Respondent shall pay a civil penalty of \$405,000 to the United States by no later than thirty days from the effective date of this Agreement. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717, plus the stipulated penalties as specified in Paragraph 17 of this Agreement. Respondent shall pay the amount by check made payable to the “United States of America,” and to mail the payment(s) to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Attn: AED/MSEB - 7151

Alternatively, Respondent may pay online at [www.pay.gov](http://www.pay.gov). From the “Search Public Form” field, enter “SFO 1.1,” click “EPA Miscellaneous Payments - Cincinnati Finance Center”, and complete the “SFO Form Number 1.1.”

**Notice:**

16. A copy of the payment(s) shall be faxed to Jocelyn L. Adair, Esq., at (202) 564-0069 no later than twenty-four (24) hours after payment(s). A copy of all the correspondence to EPA that concerns this Agreement shall be sent to:

**(Regular Mail)**

Jocelyn L. Adair, Esq.  
U.S. Environmental Protection Agency  
Mail Code 2242A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Attn: AED/MSEB-7151

**(Courier Service)**

Jocelyn L. Adair, Esq.  
U.S. EPA  
Ariel Rios South, Room 2117A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20004

**Stipulated Penalties:**

17. Respondent shall pay stipulated penalties of \$1,000 per day for failure to timely pay the civil penalty, or provide proof thereof, pursuant Paragraphs 15 and 16 of this Agreement.

**General Provisions:**

18. This Agreement becomes effective upon the date signed by EPA, after which time EPA shall forward a copy to the Respondent's attorney.
19. Notwithstanding any other provision of this Agreement, upon a default or failure of Respondent to comply with the terms of this Agreement, 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 Agreement or to recover the civil penalty pursuant to the CAA section 205, and/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.
20. The Respondent 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, its agents, assigns, or successors.

21. 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.
22. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
23. The termination and resolution of violations described in Paragraph 24 of this Agreement is conditional upon the truthfulness, accuracy, and completeness of Respondent's disclosures and representations to EPA.

**Effect of Agreement:**

24. Upon completion of the terms of this Agreement, the alleged violations described 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 the CAA section 211, 42 U.S.C. § 7545, which are not the subject matter of this Agreement, 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, local laws, or regulations.

The following parties agree to the terms of this Agreement:

Administrative Settlement Agreement - *In the Matter of Morgan Stanley Capital Group Inc;*  
AED/MSEB-7151

Morgan Stanley Capital Group Inc.

By: 

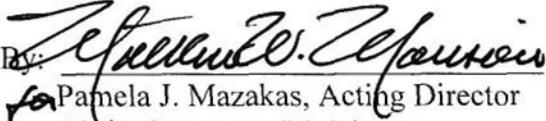
Print Name: KENNETH CARLINI

Print Title: Vice President

Date: Sept 28, 2009

**Administrative Settlement Agreement *In the Matter of: Morgan Stanley Capital Group Inc.;*  
*AED-MSEB - 7151***

**U.S. Environmental Protection Agency**

By:   
for Pamela J. Mazakas, Acting Director  
Air Enforcement Division

Date: 9/30/09