

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

In the Matter of:)
)
National Cooperative Refinery Association,)
)
Respondent.)
_____)

SETTLEMENT AGREEMENT
AED/MSEB No. 7006

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (“EPA”) and the National Cooperative Refinery Association, 1391 Ironhorse Road, McPherson, Kansas (“NCRA” or “Respondent”).

Preliminary Statement

1. EPA alleges in a Notice of Violation (“NOV”) dated July 17, 2003, that during May, 2001, NCRA violated Section 211(h) of the Clean Air Act (“Act”), 42 U.S.C. § 7545(h), and the regulations issued thereunder at 40 C.F.R. Part 80 (“Regulations”). The Regulations require conventional gasoline (“CG”) to meet certain emission standards. Pursuant to Section 211(d) of the Act, 42 U.S.C. § 7545(d), violators of this law are subject to a maximum civil penalty of \$27,500 per day for each violation plus the amount of the economic benefit or savings resulting from the violation.
2. EPA and Respondent (the “Parties”) have negotiated this Agreement in good faith, in full settlement and compromise of the violations alleged in the NOV. Implementation of this Agreement will avoid prolonged and complicated litigation between the parties. This Agreement is fair, reasonable and in the public interest. Respondent, by entering into this Agreement, does not admit any liability arising out of the transactions or occurrences alleged in either the section of the Agreement titled “Preliminary Statement,” or in the

section titled "Terms of Agreement." Entry into this Agreement by Respondent shall not be construed as an admission of liability for any purpose.

3. The parties, desiring to settle and resolve this matter, in consideration of the mutual covenants and agreements contained herein, which consideration if acknowledged by the parties to be adequate, agree as set forth herein.

Terms of Agreement

4. The parties stipulate and agree to the matters identified in this Paragraph 4. It is further agreed that these stipulations are applicable to this Agreement and any enforcement or penalty arising out of this Agreement or the subject matter of this Agreement:
 - a. At all relevant times, Respondent was a refiner and/or distributor within the meanings of 40 C.F.R. § 80.2 and/or a person within the meaning of Section 302(e) of the Act 42 U.S.C. § 7602(e).
 - b. EPA alleges that on or about May 1, 2001, part of Batch 142, totaling 1,021,398 gallons of conventional gasoline was dispensed into the Kanab pipeline. This gasoline had a Reid vapor pressure ("RVP") of 9.07 pounds per square inch ("psi") when the maximum allowed RVP was 9.0 psi.
 - c. This constitutes one violation of 40 C.F.R. § 80.27(a)(1). As the refiner that sold, offered for sale, dispensed, supplied, offered for supply or transported gasoline whose volatility exceeds the applicable standard, NCRA is liable for the alleged violation pursuant to 40 C.F.R. § 80.28.
 - d. On July 17, 2003, a Notice of Violation was issued to Respondent for the alleged violation.
 - e. Respondent has implemented procedures to prevent future violations of this type, including specific prohibitions against the release of any gasoline batch to any common carrier pipeline, or the Council Bluffs NCRA Pipeline or to NCRA's

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From May 1 through September 15 of each year,

McPherson Truck Terminal unless the batch in question has an RVP of 8.99 psi or less by test method ASTM D5191.

- 6. Jurisdiction to settle this matter exists pursuant to Section 205 of the Act, 42 U.S.C. § 7524, 40 C.F.R. Part 80, and other provisions of law.
- 7. After considering the gravity of the alleged violation, Respondent's history of compliance with the fuels regulations, the economic benefit or savings (if any) resulting from the violation, Respondent's actions to prevent future violations and Respondent's size of business, EPA has determined to assess a civil penalty of Twenty-Five Thousand Five Hundred Dollars (\$25,500) subject to the successful completion of the terms of this Agreement.
- 8. Respondent agrees to pay Twenty-Five Thousand Five Hundred Dollars (\$25,500) to the United States of America no later than 30 days from the date that this Agreement is executed by EPA and mailed to Respondent by certified mail return receipt requested ("the due date"). Late payment of the \$25,500 is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent shall pay the amount specified above by certified check made payable to the "United States of America." Respondent shall mail its certified check

to: U.S. Environmental Protection Agency
 Washington Accounting Operations
 P.O. Box 360277M
 Pittsburgh, Pennsylvania 15251
 ATTN: AED/MSEB - 7006

A photocopy of the check shall be telefaxed simultaneously to Angela E. Fitzgerald, Attorney at: 202/564-0015.


- 9. Time is of the essence to this Agreement. If after 60 days of the due date, Respondent has failed to pay the \$25,500 as required by Paragraphs 7 and 8, Respondent shall be in default of this Agreement. Upon such default or failure to comply, EPA may elect to 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 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 it is signed by EPA, at which time a copy will be returned to Respondent.
11. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution is intended and is sufficient to bind the parties.
12. Except as to any action brought by EPA pursuant to Paragraph 9 of this Agreement, Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to matters agreed to herein.
13. The terms of this Agreement are contractual and are not mere recitals. 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 the EPA to proceed against the 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.

The following agree to the terms of this Agreement:

National Cooperative Refinery Association

By: 
James S. Loving,
President

Date: 2/26/09

United States
Environmental Protection Agency

By: 
 Bruce C. Buckheit, Director
Air Enforcement Division.

Date: 3/28/04