

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

In the Matter of:)	
)	
AERO OIL COMPANY, INC.)	SETTLEMENT AGREEMENT
)	AED/MSEB - 4708
Respondent.)	
)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Aero Oil Company, Inc., 230 Lincoln Way East, New Oxford, Pennsylvania (hereafter "Aero" or "Respondent").

Preliminary Statement

1. On June 9, 1997, a Notice of Violation ("Notice") and Request for Information was issued to Aero for alleged violation of § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the reformulated gasoline ("RFG") regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). The applicable regulations provide that no person may 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 (i) unless such gasoline meets the applicable standards specified in 40 C.F.R. § 80.41; (ii) unless the product transfer documentation for such gasoline complies with the requirements in § 80.77; and, (iii) during May 1 through September 15, unless each gallon of such gasoline is VOC - controlled for the proper VOC control Region. This law also subjects violators to a maximum civil penalty of \$25,000 per day for each violation in addition to recovery of the amount of the economic benefit or savings resulting from the violation.

2. After considering the gravity of the alleged violations, the economic benefit or savings (if any) resulting from the alleged violations, Respondent's history of compliance with the Clean Air Act, the size of Respondent's business, Respondent's actions to remedy the alleged violations and/or to

prevent recurrence of further violations, the effect of the penalty on Respondent's ability to continue in business, and such other matters as justice may require, the EPA proposes a civil penalty of fifty thousand dollars (\$50,000) (hereafter "the proposed penalty").

3. 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

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

5. By entering into this Agreement, Respondent does not admit that it is in any way responsible for the alleged violations or that any violations have occurred. In addition, Respondent neither stipulates or agrees to any of the facts alleged in paragraph 6(b), (c), and (d).

6. 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. At all relevant times, Respondent was a distributor as defined within the meaning of 40 C.F.R. § 80.2.

b. On August 24, 1996, an EPA approved compliance survey was conducted at Woodies's Service Center, a retail outlet, located at 1101 Revolution Street, Havre de Grace, Maryland 21078. EPA also conducted follow-up investigations at Respondent's facilities. The inspections were conducted to determine compliance with section 211(k) of the Act, 42 U.S.C. § 7545(k) and the regulations issued thereunder (40 C.F.R. Part 80, Subpart D).

c. As a result of the survey and follow-up investigations, EPA has determined that Woodie's, which is located in the VOC-Control Region 1 covered area, was selling, dispensing, or offering for sale gasoline represented to be reformulated whose Rvp exceeded the 7.4 psi standard. The sample of gasoline taken from the retail outlet had a Rvp of 7.89 psi. EPA also determined that Aero supplied the gasoline

to Woodie's and had supplied VOC Control Region 2 reformulated gasoline to Woodie's from May 1 through September 15, 1996. EPA further determined that during June through August 1996 Aero supplied VOC Control Region 2 reformulated gasoline to the Hess Store, located at 3209 Jarrettsville Pike, Monkton, MD, a VOC-Control Region 1 covered area.

d. Where the gasoline contained in any storage tank at any retail outlet is found in violation, 40 C.F.R. 80.79(a)(3) states that the distributor shall be deemed in violation. As the distributor who sold, supplied, and transported gasoline to Woodie's and the Hess Store that exceeded the 7.4 Rvp standard, Aero is liable for violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a)(3).

e. Jurisdiction to settle this matter exists pursuant to § 211 of the Clean Air Act, 42 U.S.C. § 7545, 40 C.F.R. § 80.20, and other provisions of law.

7. Respondent agrees to pay fifty thousand dollars (\$50,000) to the United States of America within thirty (30) days from the date that this Agreement is executed by EPA and returned to Respondent by certified mail return receipt requested ("the due date"). In accordance with the Debt Collection Act of 1982, if the debt is not paid within 30 days following the due date, interest will accrue from the due date as the rate of eight percent (8%) per annum through the date of actual payment. A late payment handling charge of \$20.00 will also be imposed if the amount is not paid by the due date, with an additional charge of \$10.00 for each subsequent 30 day period. A six percent (6%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

Respondent agrees to pay the amount by check made payable to the "United States of America," and to mail the payments to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn.: AED/MSEB - 4708

A photocopy of the check shall be mailed simultaneously to:

J. L. Adair, Attorney/Advisor
U.S. Environmental Protection Agency
MSEB/AED (2242-A)
401 M Street, S.W.
Washington, D.C. 20460
Attn.: AED/MSEB - 4708

In addition, any correspondence concerning this agreement or compliance information required in paragraph nine (9) shall be mailed to J. L. Adair at her above address.

8. Respondent also agrees to implement a quality assurance program. The quality assurance program, at a minimum, shall include the following:

a. Before the beginning of the volatility control season, May 1st, Aero shall train its key personnel (i.e., persons who are involved with the dispatch and transport of gasoline) to supply the correct gasoline to Aero customers. The training course shall include instructing each dispatcher and truck driver to distinguish RFG control areas from conventional gasoline control areas, 7.8 psi control areas from 9.0 psi control areas, and 7.4 psi control areas from 8.3 psi control areas.

b. Before the beginning of the volatility control season, May 1st, Aero's dispatchers shall contact the supplying facility and document that the facility is supplying the correct gasoline for the particular areas where Aero is transporting or arranging for the transportation of the gasoline.

c. Aero's truck drivers shall be instructed to review the bills of lading from the loading terminal to ensure that the gasoline being loaded onto the truck is the correct gasoline for the particular areas where the truck driver is unloading or delivering the gasoline.

d. Aero shall also train and instruct its office personnel who examine bills of lading and invoices for accounting purposes to examine the bills of lading and invoices to ensure that the gasoline supplied or transported was the correct gasoline for the area that Aero supplied or transported the gasoline.

e. Aero shall provide educational aids to its key personnel to help them distinguish the various control areas. These aids shall include the following: (1) a map of the geographic area where Aero is dispatching and transporting gasoline. The map shall distinguish RFG areas from conventional gasoline areas, 7.4 psi areas from 8.3 psi areas, and 7.8 psi areas from 9.0 psi areas; and, (2) a notice (placard/decal) on the dashboard of each of Aero's trucks to advise the truck driver to examine the bills of lading to ensure that the gasoline being loaded onto the truck is the correct gasoline for the particular areas where the truck driver is unloading or delivering the gasoline.

f. For each customer that Aero delivers gasoline to in VOC Control Region 1, Aero shall notify the customer of what type of gasoline is required. The notice shall consist of a one pager which clearly list the customer's name and address, and the type of gasoline required for the particular area. The notice shall also advise each customer to turnover their gasoline tanks by June 1st to ensure compliance with the applicable RVP standard, and shall further advise the customer to review the bills of lading to ensure that the correct gasoline is delivered.

g. Finally, during the volatility control season for the years 1999, 2000, and 2001, Aero shall conduct quality assurance and testing of each grade of gasoline at unbranded retail outlets where Aero is the sole or predominant supplier to determine if the applicable maximum and/or minimum standards for oxygen, benzene, RVP, or VOC or NOx emission performance are met. On each occasion when gasoline is found in noncompliance with one of the standards, at a retail outlet at which Aero is the sole or predominant supplier of gasoline, Aero shall take the appropriate corrective action by stop selling the gasoline and/or notifying its customer of the test results and advising the customer to stop selling the gasoline, and by promptly remedying the violation by removing the violating product or adding more complying product until the applicable standards are achieved. Aero shall use the sampling methodology prescribed at 40 C.F.R. Part 80, Appendix D; and, the testing methodology prescribed at 40 C.F.R. § 80.46. Under this Agreement, Aero is required to take not more than fifteen (15) regulatory samples and tests per year. However, if no violations are detected the first year, Aero may reduce the amount of sampling and testing the second and third year to eight (8) each year. Otherwise, Aero shall conduct fifteen (15) samples and tests on these samples in the second and third years.

h. EPA will not pursue a civil penalty for a violation detected by Aero pursuant to its quality assurance program, providing that Aero immediately reports the violation to EPA and takes the appropriate corrective action to ensure that the gasoline is brought into compliance.

9. Before the beginning of the volatility control season, May 1st, for a period of three (3) years, Aero shall document compliance with paragraph eight (8) by providing a copy of the training materials; maps; notices (placards and decals); the name, business address, and phone number for each person trained; the customer's name and the address of the retail outlet or wholesale purchaser consumer facility that Aero provided compliance information; the name, address, description of the sample of gasoline taken, and the test results on the sample of gasoline; and a full description of any corrective action.

10. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraphs 7 of this Agreement, Respondent agrees to pay a stipulated penalty of \$50,000, plus the proposed penalty. In addition, upon the failure to timely perform an act required pursuant to paragraph 8 of the agreement, Respondent agrees to pay a stipulated penalty of \$2,500. The stipulated penalty shall be immediately due and owing. 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 § 211(d) of the Clean Air Act, 42 U.S.C. § 7545(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to § 211 of the Clean Air 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 § 211 of the Clean Air 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.

a. EPA agrees to provide a written notice to Aero before finding Aero in default or out of compliance with paragraph 8 of this Agreement. EPA agrees to send the notice by certified mail, return receipt requested. Aero shall have fifteen (15) days to cure the default or noncompliance before stipulated penalties accrue or enforcement action is taken. The notice and any correspondence concerning this Agreement shall be sent to Aero's attorneys:

Jeffrey Leiter
LeAnn Johnson
Collier, Shannon, Rill & Scott
3050 K Street, N.W.
Washington, D.C. 20007

11. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent. This Agreement shall expire on the third anniversary of its effective date.

12. 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 Respondent.

13. 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.

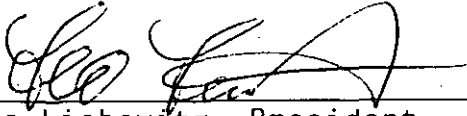
14. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

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

16. 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 § 211 of the Clean Air 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:

Aero Oil Company, Inc.

by: 
Leo Liebowitz, President

Date: 10-15-98

United States
Environmental Protection Agency

by: 

Date: 11-6-98

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