

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 do not admit that it is in any way responsible for the alleged violations or that any violations have occurred.

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 September 6, 1996, the U.S. Environmental Protection Agency ("EPA") conducted an inspection of United Dairy Farmers, Inc's gasoline retail outlet, located at 509 Licking Pike, Wilder, Kentucky 41071. EPA also conducted follow-up investigations at Prescott Tank Lines, Inc. ("Prescott"), located at 3955 Montgomery Road, Cincinnati, Ohio 45212, and Respondent's facility, located at 230 East 33rd Street, Covington, Kentucky 41015.

c. As a result of the inspection and follow-up investigations, EPA determined that during August and September 1996 Ashland sold and supplied VOC-controlled reformulated gasoline that contained ethanol and MTBE.

d. Where the gasoline contained in any storage tank at any retail outlet or terminal is found in violation, 40 C.F.R. § 80.79(a) states that the refiner and/or distributor shall be deemed in violation. As a refiner and distributor who combined ethanol VOC-controlled reformulated gasoline with MTBE VOC-controlled reformulated gasoline, Ashland is liable for violation of § 80.78(a)(8).

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. After considering the gravity of the alleged violation, Respondent's history of compliance with the regulations, EPA has determined to remit and mitigate the civil penalty to \$50,000 subject to successful completion of the terms of this Agreement.

Respondent's agree to pay \$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 at 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 agree to pay the amount by check made 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 - 4779

A photocopy of the check shall be mailed simultaneously to:

J. L. Adair, Attorney/Advisor
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
Air Enforcement Division (2242-A)
401 M Street, S.W.
Washington, D.C. 20460
Attn.: AED/MSEB - 4779

8. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 7 of this Agreement, Respondents agree to pay a stipulated penalty of \$100,000. This stipulated penalty is in addition to the proposed penalty. Upon such default this amount 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 Respondent before finding Respondent in default of this Agreement. EPA agrees to send the notice by certified mail, return receipt requested. Respondents shall have five (5) business days to receive the notice in the mail. Thereafter, Respondent shall have ten (10) business days to make all payments or cure the default. The notice and any correspondence concerning this Agreement shall be sent to Respondent's attorney:

Williams Bumpers
BAKER & BOTTS
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400

9. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.

10. Respondent hereby represent 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.

11. 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.

12. 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.

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

14. 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 Respondents 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 Respondents of responsibility to comply with other state, federal or local law or regulations.

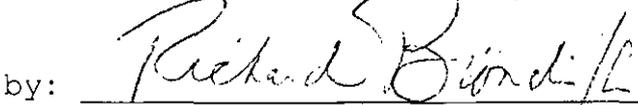
The following agree to the terms of this Agreement:

Ashland Petroleum Company,

by: 

Date: October 12, 1998

United States
Environmental Protection Agency

by: 

Date: 11/3/98

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 2 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Clara G. Poffenberger
BAKER & BOTTS, L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Re: File No. AED/MSEB - 4779
Ashland Petroleum Company

NOTICE OF VIOLATION OF THE CLEAN AIR ACT AND
REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF THE
CLEAN AIR ACT

Dear Ms. Poffenberger:

On September 6, 1996, the U.S. Environmental Protection Agency ("EPA") conducted an inspection of United Dairy Farmers, Inc.'s gasoline retail outlet, located at 509 Licking Pike, Wilder, Kentucky 41071. EPA also conducted follow-up investigations at Prescott Tank Lines, Inc. ("Prescott"), located at 3955 Montgomery Road, Cincinnati, Ohio 45212, and Ashland Petroleum Company, located at 230 East 33rd Street, Covington, Kentucky 41015. The inspection and follow-up investigations were conducted to determine compliance with section 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(k), and the regulations issued thereunder (40 C.F.R. Part 80, subpart D). Where inappropriate fuels are used in internal combustion engines, the emissions of harmful gases can increase significantly. Notwithstanding improvements in vehicle emission controls, emissions from motor vehicles continue to make up a very large portion of all air pollution. Congress has established a program of improvement and regulation of fuels to protect our air quality from unnecessary pollution associated with the misfueling of vehicles.

The applicable regulations provide that no person may combine any VOC-controlled reformulated gasoline that is produced using ethanol with any VOC-controlled reformulated gasoline that is produced using any other oxygenate during the period January 1 through September 15. 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.

As a result of the inspection and follow-up investigations, EPA has determined that during August and September 1996 Ashland sold and supplied VOC-controlled reformulated gasoline that contained ethanol and MTBE. Where the gasoline contained in any storage tank at any retail outlet or terminal is found in violation, 40 C.F.R. § 80.79(a) states that the refiner and/or distributor shall be deemed in violation. As a refiner and distributor who combined ethanol VOC-controlled reformulated gasoline with MTBE VOC-controlled reformulated gasoline, Ashland is liable for violation of § 80.78(a)(8).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize the Administrator of EPA to assess a civil penalty of up to \$25,000 for every day of each violation and the economic benefit or savings resulting from the violation. In determining the appropriate penalty for the noticed violation, we consider the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of your business, your history of compliance with the Clean Air Act, actions taken by you to remedy the violation and to prevent recurrence of further violations, the effect of the penalty on your ability to continue in business and such other matters as justice may require.

We believe it is in your interest to demonstrate that remission or compromise of the penalty amount is appropriate. However, in order to assist us in developing the appropriate penalty and settlement positions, we have prepared the enclosed Request for Information. Under the law you are required to submit this information or be subject to additional penalties and other sanctions above and beyond those assessed for the fuel violation identified in this Notice. In addition, if you do not submit this information in a timely manner, we will be forced to make assumptions with regard to the factors to consider in determining the appropriate amount of civil penalty which may not be in your interest or whether remission or compromise of the civil penalty amount is appropriate.

We encourage early settlement of such matters. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violation is corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court.

The EPA attorney designated below has been assigned to this case. All information should be sent to the case attorney. Please contact this attorney regarding the Notice of Violation and Request for Information.

Jocelyn L. Adair, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch (2242-A)
Air Enforcement Division
401 M Street, S.W.
Washington, D.C. 20460
Phone number: (202) 564-1011

Please let me once again emphasize that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement in this matter.

Sincerely yours,

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

Enclosure