

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

<u>In the Matter of:</u>)	
)	
Big West Oil Company and)	SETTLEMENT AGREEMENT
Flying J Inc.)	
)	AED/MSEB -6010
<u>Respondents.</u>)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Big West Oil Company and Flying J Inc., 333 West Center, North Salt Lake, Utah 84054 hereafter (hereafter "Respondents" or "Big West and Flying J").

Preliminary Statement

1. On December 12, 2000, a Notice of Violation ("Notice") was issued to Respondents for violation of § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the anti-dumping regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). See Attachment 1. The EPA fuels regulations require conventional gasoline to meet certain emission standards and impose on refiners a number of quality assurance, recordkeeping, and reporting requirements. Violators of this law are subject to a maximum civil penalty of \$27,500 per day for each violation and the amount of the economic benefit or savings resulting from the violation.

2. After considering the gravity of the alleged violations, Respondents' history of compliance with the regulations, and the size of Respondents' business, EPA proposed a civil penalty of \$15,000 (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, Respondents do not admit that they are 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, Respondents were refiners as defined within the meaning of 40 C.F.R. § 80.2.

b. On November 5, 1997, EPA audited Respondents to determine compliance with § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the anti-dumping fuels regulations issued thereunder at 40 C.F.R. Part 80.

c. As a result of EPA's audit of Big West and Flying J, EPA alleged that Big West and Flying J, in 1995 and 1996, failed to comply with the fuels regulations as follows:

- (1) Failed to used the aromatics test method in violation of 40 C.F.R. §§ 80.46 and 80.101;
- (2) Failed to follow the procedures for composting samples in violation of 40 C.F.R. § 80.91; and ,
- (3) Failed to produce and ship premium gasoline that complied with the maximum per gallon RVP standard of 9.0 psi in violation of 40 C.F.R. § 80.27.

d. On August 28, 2000, EPA inspected Flying J's terminal, located in North Salt Lake, Utah. As a result of the inspection, EPA determined that Flying J was selling or offering for sale regular and premium gasoline that failed to comply with maximum per gallon RVP standard of 7.8 psi as required by § 80.27.

e. As a refiner or distributor of the gasoline in question, Respondents are liable for violations of the anti-dumping fuels regulations pursuant to 40 C.F.R. §§ 80.5 and 80.28.

f. 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. EPA has determined to remit and mitigate the civil penalty to \$7,500, subject to successful completion of the terms of this Agreement.

Respondent agrees to pay \$7,500 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"). Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717.

Respondents 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 - 6010.

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)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Attn.: AED/MSEB - 6010

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 \$7,500. 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. Respondents specifically agree 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.

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

10. Respondents hereby represent that the individual or individuals executing this Agreement on behalf of Respondents are authorized to do so and that such execution is intended and is sufficient to bind Respondents.

11. Respondents waive their 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:

Big West Oil Company, and
Flying J Inc.

by: Jeff Utley
JEFF UTLEY
REFINERY MANAGER
United States
Environmental Protection Agency

Date: 5-17-2001

by: Richard Bindi/f
Bruce C. Buckheit, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

Date: 6-12-01



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

December 12, 2000

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. R. E. Germer, President
Big West Oil Company and
Flying J Refinery
333 West Center
North Salt Lake, Utah 84054

Re: File No. AED/MSEB - 6010
NOTICE OF VIOLATION OF THE CLEAN AIR ACT

Dear Mr. Jenkins:

On November 5, 1997, the U.S. Environmental Protection Agency ("EPA") audited Big West Oil Company and Flying J Refinery ("Big West" and "Flying J"), located at 333 West Center, North Salt Lake, Utah for compliance with the Clean Air Act ("Act"), 42 U.S.C. § 7545(k), and the anti-dumping fuels regulations issued thereunder (40 C.F.R. part 80, subpart E). On August 28, 2000, EPA also inspected Flying J's terminal located in North Salt Lake, Utah.

The EPA fuels regulations require conventional gasoline to meet certain emission standards and impose on refiners a number of quality assurance, recordkeeping, and reporting requirements. As a result of EPA's audit of Big West and Flying J, EPA determined that Big West and Flying J, in 1995 and 1996, failed to comply with the fuels regulations as follows:

- (1) Failed to use the aromatics test method in violation of 40 C.F.R. §§ 80.46 and 80.101;
- (2) Failed to follow the procedures for composting samples in violation of 40 C.F.R. § 80.91; and ,
- (3) Failed to produce and ship premium gasoline that complied with the maximum per gallon RVP standard of 9.0 psi in violation of 40 C.F.R. § 80.27.

As a result of EPA's inspection of Flying J's terminal on August 28, 2000, EPA determined that Flying J was selling or offering for sale regular and premium gasoline that failed to comply with maximum per gallon RVP standard of 7.8 psi as required by § 80.27.

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize EPA to assess a civil penalty of up to \$27,500 per day for each such violation plus the economic benefit or savings resulting from the violation. In determining the appropriate penalty for violations such as this, we consider the gravity of the violations, the economic benefit or savings (if any) resulting from the violations, the size of your business, your history of compliance with the Act, actions taken by you to remedy the violations and prevent future violations, the effect of the penalty on your ability to continue in business and other matters as justice may require. Based on these factors, we propose a civil penalty of \$15,000 for the violations alleged in this Notice.

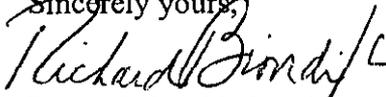
We encourage early settlement of matters such as this. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violation is corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint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

Please contact the EPA attorney designated below regarding this Notice:

Jocelyn L. Adair, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch (2242-A)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Phone number: (202) 564-1011

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, Director
Air Enforcement Division