



facility where the violation was found. The NOV further stated that the statutory civil penalty is Twenty-Seven Thousand Five Hundred Dollars (\$27,500) per day for each such violation plus the amount of economic benefit or savings resulting from the violation pursuant to § 211(d) of the Act, 42 U.S.C. § 7545(d). The proposed civil penalty for the violation alleged in the NOV was One Thousand Four Hundred Dollars (\$1,400).

2. 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

3. The parties agree that the settlement of this matter is in the public interest and that this Agreement is the most appropriate means of resolving the matter.

4. The parties stipulate and agree to the following facts. It is further agreed that these stipulations are applicable to this Agreement and any proceeding arising out of this Agreement or the subject matter of this Agreement.

a. At all relevant times Respondent was the retailer of the Country Food Basket retail outlet located at 9791 Hwy. 36, Orchard, Texas, within the meaning of 40 CFR § 80.2 (k).

b. On July 4, 1998, an RFG survey inspection was conducted at the Country Food Basket branded gasoline retail outlet located at 9791 Hwy. 36, Orchard, Texas. This inspection determined that premium gasoline having a VOC emissions performance reduction

less than the minimum standard was being sold or offered for sale at the time of the inspection. The premium gasoline's VOC emissions performance reduction was 28.67% less than the allowable minimum of 32.60% for VOC Region 1. This constitutes a violation of 40 C.F.R. § 80.78(a)(1).

c. EPA further determined that Respondent was liable for the violation pursuant to 40 CFR § 80.28, as the retailer.

d. Respondent has agreed to use inventory control during the month of April each year to prevent future violations.

e. Jurisdiction to settle this matter exists pursuant to section 211 of the Act, 42 U.S.C. § 7545, 40 CFR Part 80, and other provisions of law.

5. After considering the gravity of the alleged violation, Respondent's history of compliance, the terms of this Agreement, and other facts presented by Respondent, EPA has determined to conditionally remit and mitigate the civil penalty to Eight Hundred Fifty Dollars (\$850). Respondent agrees to pay Eight Hundred Fifty Dollars (\$850) within thirty days of receipt of a signed settlement agreement from EPA. In the event Respondent does not receive a copy of this Agreement within thirty (30) days following its execution by EPA, the due date shall be thirty (30) days following the date of Respondent's receipt of an executed copy. Late payment of this civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay this amount by cashier's check or certified check with the

notation "AED/MSEB - 4903" payable to the "United States of America," and mailed to:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
Attention: AED/MSEB - 4903

A copy of this check shall be forwarded to Judith E. Graham, at the following address:

Judith E. Graham, Attorney/Advisor  
U.S. Environmental Protection Agency  
Western Field Office  
12345 W. Alameda Parkway, Suite 214  
Denver, CO 80228

6. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 5 of this Agreement, or upon default of or failure to comply with any terms of this Agreement by Respondent, the parties agree that upon such default of failure to comply, EPA may commence an action to enforce this Agreement or to recover the civil penalty pursuant to § 205 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 § 203 of the Act, 42 U.S.C. § 7522, 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 the passage of time.

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

8. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution intended and is sufficient to bind Respondent, its officers, agents, directors, owners, heirs, assigns, and successors.

9. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to matters consented to herein. Notwithstanding its agreement to settle or resolve this matter, Respondent neither admits or denies the findings of fact or conclusions or law contained herein.

10. 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.

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

12. 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 § 203 of the Clean Air Act, 42 U.S.C. § 7522, which are not the subject matter of this Agreement; or for other violations of law.

The following agree to the terms of this Agreement:

**GENE DEMNY d/b/a COUNTRY FOOD BASKET**

by: Eugene L. Demny  
Gene Demny  
d/b/a Country Food Basket

Date: 8/16/99

**United States  
Environmental Protection Agency**

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

Date: 9/15/99