

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C.

_____		)	
In the matter of:		)	
		)	
<b>Conoco, INC.</b>		)	File No. MSEB/AED - 4722
		)	
		)	SETTLEMENT AGREEMENT
Respondent,		)	
_____		)	

**THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Conoco, Inc., P.O. Box 4783, Houston, TX 77210-4783 (Respondent).**

Preliminary Statement

a. On July 29, 1997, a Notice of Violations (NOV) was issued to the Respondent alleging that the Respondent had violated § 211 of the Clean Air Act (the Act), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 CFR Part 80. The NOV stated that three grades of unleaded gasoline having a Reid vapor pressure ("RVP") greater than 7.8 pounds per square inch ("psi") were sold, offered for sale or dispensed on August 20, 1996 in Grant Parish, Louisiana, at the Bentley Hardware/Grocery gasoline retail outlet at 19069 Highway 167, Bentley, LA, (hereinafter "Bentley Hardware"). The NOV also

stated that such high RVP gasoline was supplied by J.B. McCartney Oil of Highway 8, Jena, Louisiana, ("McCartney Oil") into Grant Parish, Louisiana, to Bentley Hardware on twenty-eight (28) occasions in the periods between June 1 and September 15, 1995 and 1996. In addition, the NOV stated that gasoline having an RVP greater than 7.8 pounds per square inch psi was also supplied by McCartney Oil into Grant Parish, Louisiana, to Andy's Grocery gasoline retail outlet at 7978 Ridge Street, Pollock, Louisiana, ("Andy's Grocery") on seventy-five (75) occasions during these same volatility control periods.

b. These actions were in violation of 40 C.F.R. §80.27, the "volatility regulations". As the refiner whose corporate, trade, or brand name was displayed at the above-mentioned retail outlets, Conoco, Inc., was considered liable for these one hundred six (106) violations under 40 C.F.R. §80.28.

c. After considering the gravity of the violations and the Respondent's history of compliance under the regulations, the EPA proposed in the NOV a civil penalty of one hundred twenty-one thousand and fifty-six dollars (\$121,056.00) (hereinafter "the proposed penalty").

d. 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

1. 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.

2. 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 the Respondent was the refiner whose corporate, trade, or brand name was displayed at Bentley Hardware and Andy's Grocery gasoline retail outlets in Grant Parish, Louisiana, within the meaning of 40 CFR § 80.28.

b. On August 20, 1996, inspectors for the EPA inspected the Bentley Hardware gasoline retail outlet. During that inspection, samples of regular, plus, and super grade gasoline were taken from the Bentley Hardware retail outlet for laboratory analysis. Analysis of the samples established that their RVP was in excess of the 7.8 psi standard specified in 40 C.F.R. § 80.27.

c. EPA review of gasoline delivery records to the Bentley Hardware retail outlet established that McCartney Oil had supplied gasoline having an RVP greater than 7.8 psi to this retail outlet on twenty-eight occasions during the June 1 through September 15 volatility control periods in 1995 and 1996.

d. On August 22, 1996, inspectors for the EPA inspected

Andy's Grocery gasoline retail outlet. EPA review of gasoline delivery records to Andy's Grocery established that McCartney Oil had supplied gasoline having an RVP greater than 7.8 psi to this retail outlet on seventy-five (75) occasions in the June 1 through September 15 volatility control periods in 1995 and 1996.

e. The above constitutes one hundred six (106) violations of 40 C.F.R. § 80.27. As the refiner whose corporate, trade, or brand name was displayed at these two facilities, the Respondent is liable for these violations pursuant to 40 CFR § 80.28.

f. 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.

3. After considering the gravity of the violations, the Respondent's history of compliance, the terms of this Agreement, and other facts presented by the Respondent, EPA has determined to conditionally remit and mitigate the proposed penalty to sixty-one thousand dollars (\$61,000.00). The Respondent agrees to pay sixty-one thousand dollars (\$61,000.00) within thirty days of the signing of this Settlement Agreement by EPA. In the event the Respondent does not receive a copy of this Agreement within thirty (30) days following its execution by the EPA, the due date shall be thirty (30) days following the date of the Respondent's receipt of an executed copy. In accordance with the Debt Collection Act of 1982, if the debt is not paid within thirty

(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 twenty dollars (\$20.00) will also be imposed if the amount due is not paid by the due date, with an additional charge of ten dollars (\$10.00) for each additional thirty (30) day period.

a. The Respondent agrees to pay this amount by cashier's check or certified check with the notation "AED/MSEB - 4722" payable to the "United States of America," and mailed to:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 306277M  
Pittsburgh, Pennsylvania 15251  
Attention: AED/MSEB - 4722

A copy of this check shall simultaneously be forwarded to Judith Lubow at the following address:

Judith Lubow, Attorney/Advisor  
U.S. Environmental Protection Agency  
12345 West Alameda Parkway  
Suite 214  
Denver, CO 80228

b. The Respondent agrees to pay this penalty out of its own funds and to waive all claims of indemnification for payment of this penalty or costs associated with this matter that Respondent might have against any third party.

4. In addition to the civil penalty set forth in paragraph B(3) of this Agreement, the Respondent agrees to do the following:

a. conduct a volatility quality assurance program for the fifty-four (54) *JAN 2* ~~seventy-seven (77)~~ Conoco branded retail outlets presently located within the three (3) 7.8 RVP areas in the state of Louisiana which are surrounded by 9.0 RVP areas (Grant, Lafayette, and St. Mary Parishes), plus the six (6) 7.8 RVP areas in the state of Louisiana which are presently designated as ozone non-attainment areas (Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, and LaFourche Parishes). Under this program Conoco will sample and test the volatility of the regular and premium grades of gasoline found in at least <sup>70%</sup> 50% of these outlets during the combined 1999 and 2000 volatility control seasons of June 1 through September 15. Conoco also agrees to promptly correct any violations of the volatility regulations discovered through this sampling and testing program. The sampling and testing will be conducted in accordance with the requirements found in Appendix D of 40 C.F.R. Part 80. *JAN 2*

b. By October 1, 2000, the Respondent shall submit to the EPA, by mailing to Judith Lubow at the EPA address listed above, a written Certificate of Completion, attesting to the completion of the volatility quality assurance program specified in the above paragraph. The Respondent shall include with this Certificate a list of the retail outlets from which the samples were obtained, and the date each outlet was sampled. The Completion Certificate must also contain the following signed and

dated statement:

"Recognizing that there are significant civil and criminal penalties for the making or submission of false or fraudulent statements or representations, I certify that, based upon personal knowledge or upon information and belief formed after reasonable inquiry, the information contained in or accompanying this Certificate is true, accurate, and complete."

Dated: \_\_\_\_\_

(typed name and title)

5. Time is of the essence to this Agreement. Upon failure to timely perform under paragraphs 3 and 4 of this Agreement, or upon default of or failure to comply with any terms of this Agreement by the Respondent, the entire proposed civil penalty of one hundred twenty-one thousand and fifty-six dollars (\$121,056.00) shall be due and owing, minus any penalty amounts already paid. The parties agree that upon such default or failure to comply, the 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. The Respondent specifically agrees that in the event of such default or failure to comply, the EPA may proceed in an action based on the original claim of violation of § 211 of the Act, 42

U.S.C. § 7545, and the 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.

6. This Agreement becomes effective upon the date signed by the EPA; after which time a copy will promptly be returned to the Respondent.

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

8. The 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.

9. 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.

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

11. 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 § 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.

The following agree to the terms of this Agreement:

**Conoco, Inc.**

by: Carol J. Wilson <sup>JAD</sup> Date: 7-8-98  
Typed name: CAROL J. WILSON  
Title: ACTING BRANDED MARKETING MANAGER  
GULF COAST BUSINESS UNIT

**United States  
Environmental Protection Agency**

by: Bruce C. Buckheit Date: 1/16/99  
Bruce C. Buckheit  
Director, Air Enforcement Division  
Office of Enforcement and Compliance Assurance