

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.

_____)	
In the matter of:)	
)	
Ethyl Corporation)	File No. MSEB/AED - 4879
)	
)	SETTLEMENT AGREEMENT AND
Respondent.)	AUDIT POLICY DETERMINATION
_____)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Ethyl Corporation located at 330 South Fourth Street, Richmond, VA 23219-4304.

I. Preliminary Statement

1. On November 10, 1997, Ethyl Corporation (hereinafter the "Respondent"), provided written notification to EPA of the existence of violations of the gasoline detergent additization regulations, 40 C.F.R. Part 80, Subpart G ("detergent regulations"). Supplemental information about the violations was provided by Respondent in January, 1998. Respondent requested application of EPA's "Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations" (60 F.R. 66706, December 22, 1995 ("Audit Policy")).

2. On January 19, 1999, EPA issued a Notice of Violations ("NOV") to Respondent for the violations that had been self-

reported. It was EPA's conclusion at that time that Respondent had failed to meet the conditions necessary for application of the Audit Policy to these violations.

3. EPA's NOV to Respondent stated the following allegations:

a. In 1997, Respondent's customer, Amoco Corporation, (the "customer"), failed to comply with requirements found in 40 C.F.R. §§ 80.170 and 80.168(b) of the detergent regulations, by setting its gasoline additization equipment concentration rates beneath the legal minimum, and by failing to attain the gasoline additization compliance standard.

b. Both types of violations (as referred to in paragraph I(3)(a), above,) occurred for a total of forty-six (46) monthly compliance periods at the following fourteen (14) gasoline terminals operated by the customer, which had been identified by the customer to EPA: Spring Valley, MN; Burley, ID; Salt lake City, UT; Cedar Rapids, IA; Mandan, ND; Sauk Centre, MN; Moorehead, MN; Dubuque, IA; Jamestown, ND; Ottumwa, IA; Twin Cities, MN; Boise, ID; Des Moines, IA; and Sioux Falls, SD.

c. Respondent's customer was the gasoline detergent blender, within the meaning of 40 C.F.R. § 80.140, of the customer's fourteen (14) gasoline terminals (as referred to in paragraph (III)(3)(b), above).

d. The Respondent was the detergent manufacturer which, along with its customer, caused these violations, and Respondent was thus liable for these ninety-two (92) violations of 40 C.F.R. §80.168(b), pursuant to 40 C.F.R. § 80.169(a)(4).

e. The statutory civil penalty for these violations is an amount up to twenty-seven thousand and five hundred dollars (\$27,500) per day for each violation, plus the amount of economic benefit or savings resulting from each violation, pursuant to § 211(d) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(d).

II. EPA's Audit Policy Determination

1. EPA issued the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties; however, EPA retains its discretion to recover any economic benefit gained as a result of non-compliance.

2. Where the disclosing party establishes that it satisfies all of the following conditions set forth in the Audit Policy, EPA will not seek gravity-based penalties for violations of federal environmental requirements: 1. discovery of the violation(s) occurred through an environmental audit or due diligence; 2. the violations were voluntarily discovered and promptly disclosed; 3. discovery and disclosure of the violations were independent of prior actions of the government or third party plaintiff; 4. the violations were corrected and the environmental harm was remedied; 5. steps were taken to prevent recurrence; 6. the violations were not repeat violations; 7. the violations did not include specific serious violations excluded under the Audit Policy; and 8. the violator has cooperated with EPA about the matter.

3. Where the disclosing party establishes that it satisfies all of the conditions listed above with the exception of establishing that the violation(s) were found through a formal audit or due diligence, EPA will reduce gravity-based penalties for the violation(s) by 75%.

4. Upon consideration of relevant information about the violations after the issuance of the NOV, EPA now concludes that, based upon the information supplied by Respondent, the Respondent

has satisfied all the above conditions for application of the Audit Policy to this case, with the exception of establishing that the violations were found through a formal audit or due diligence. Under these circumstances, application of the Audit Policy results in the elimination of seventy-five per cent (75%) of the gravity-based component of the penalties for these violations.

5. Applying the Audit Policy, and contingent upon the truthfulness and accuracy of the information provided by Respondent, seventy-five percent (75%) of the gravity-based penalties for these violations will be eliminated by EPA.

6. Based on information supplied by Respondent, no additional penalty for economic benefit will be assessed.

7. After considering the gravity of the violations, the Respondent's history of compliance, the terms of this Agreement, other facts presented by the Respondent, and the application of the Audit Policy to this case, EPA has determined to conditionally remit and mitigate the civil penalty for these violations to sixty-seven thousand and nine hundred dollars (\$67,900.00).

III. Terms of Agreement

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.

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. Jurisdiction to settle this matter exists pursuant to

section 211 of the Act, 42 U.S.C. § 7545, 40 C.F.R. Part 80, and other provisions of law.

3. The Respondent agrees to pay sixty-seven thousand and nine hundred dollars (\$67,900.00) within thirty days of receipt of the signed Settlement Agreement from the EPA (the "penalty due date"). In accordance with the Debt Collection Act of 1982, if the debt is not paid within thirty (30) days following the penalty due date, interest will accrue from the penalty 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 penalty due date, with an additional charge of ten dollars (\$10.00) for each additional thirty (30) day period.

4. Respondent agrees to pay the sixty-seven thousand and nine hundred dollar (\$67,900) penalty required by paragraph III(3) of this Agreement by cashier's check or certified check, with the notation "AED/MSEB - 4879" payable to the "United States of America". The penalty is to be mailed to the following address:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 306277M
Pittsburgh, Pennsylvania 15251
Attention: AED/MSEB - 4864

A copy of the penalty check shall be simultaneously 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

5. Time is of the essence to this Agreement. Upon Respondent's failure to timely pay pursuant to paragraph (III)(3)

of this Agreement, the parties agree that the following remedies become available to the EPA:

a. EPA may commence an action to enforce this Agreement.

b. In the event of such default or failure to comply, or of the established inaccuracy or lack of truthfulness of the information supplied by Respondent about the violations, EPA may pursue any other legal remedies available to it. This includes proceeding in an action based on the original claim of violations 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.

c. Further, if the Respondent fails to pay the sixty-seven thousand and nine hundred dollar penalty required by paragraph III(3) within ninety days of the penalty due date, the parties agree that the Respondent owes a stipulated penalty to the EPA of ninety-seven thousand dollars (the "stipulated penalty"). The stipulated penalty is an amount equal to the original penalty proposed by EPA for these violations in the NOV, pursuant to §§ 205 and 211 of the Clean Air Act. Once the stipulated penalty becomes due, EPA may bring an action against the Respondent to recover the stipulated penalty.

6. Consistent with the purposes of the Audit Policy, Respondent agrees, on a continuing and company-wide basis, to institute internal policies and procedures to prevent recurrence of violations of the detergent regulations.

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

8. The parties hereby represent that the individual(s) executing this Agreement on behalf of the respective party are authorized to do so and that such execution intended and is

sufficient to bind the party and, when applicable, its officers, agents, directors, owners, heirs, assigns, and successors.

9. 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 agreed to herein.

10. The terms of this Settlement Agreement and Audit Policy Determination shall be the complete settlement of all civil administrative claims and causes of action alleged or which could have been alleged under 40 C.F.R. §80.168(b) pursuant to 40 C.F.R. §80.169(a)(4), for violations relating to the subject matter of the NOV, based upon facts known to EPA on or before the effective date of this Agreement. Respondent's full completion of the terms of this Agreement shall terminate this matter, with, however, such termination being contingent upon the accuracy and truthfulness of the information provided about the violations by Respondent.

11. 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.

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.

The following agree to the terms of this Agreement:

Ethyl Corporation

by: A. McLean
(Printed Name:) Alex McLean
(Printed Title:) Sr. Vice President
Petroleum Additives

Date: 7/21/99

**United States
Environmental Protection Agency**

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

Date: 9/10/99