

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

In the Matter of:)	
)	
EVANS LUMBER COMPANY, INC.)	SETTLEMENT AGREEMENT
Waverly, VA)	AED/MSEB - 4725
)	
Respondent.)	
)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Evans Lumber Company ("Evans"), 527 West Main Street, Waverly, Virginia (hereafter "Respondent").

Preliminary Statement

1. On July 30, 1997, a Notice of Violation ("Notice") was issued to Respondent for three (3) violations of § 211 of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). See Attachment 1. The misfueling provision of the Act, § 211(g), provides that no person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 percent (by weight). In addition, the regulations prohibit any person from dispensing, selling, supplying, offering for sale or supply, transporting, or introducing into commerce diesel fuel for use in motor vehicles unless the diesel fuel has a sulfur percentage, by weight, no greater than 0.05 percent. This law also subjects violators to a civil penalty of \$25,000 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, Respondent's history of compliance with the regulations, EPA has determined to remit and mitigate the civil penalty to \$12,000 subject to successful completion of the terms of this Agreement.

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. 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 wholesale purchaser-consumer as defined within the meaning of 40 C.F.R. § 80.2.

b. On December 18, 1996, EPA inspected Evans, located at 527 West Main Street, Waverly, Virginia.

c. During the inspection, samples of diesel fuel were taken from Evans' above ground storage tank and from the propulsion tanks of three (3) of Evans' 1974 Mack Trucks. The diesel fuel found in the storage tank had a sulfur content of .1756 wt. percent; Truck # 1, VIN: 457240G510572, had a sulfur content of .1762 wt. percent; Truck # 2, VIN: MB607T4015, had a sulfur content of .1805 wt. percent; and, Truck # 3, VIN: R685ST37023, had a sulfur content of .1762 wt. percent.

d. As a result of the inspection, EPA determined that Evans introduced or caused or allowed the introduction into the three motor vehicles described above diesel fuel whose sulfur content exceeded the 0.05 wt. percent standard. Therefore, Evans is liable for at least three (3) violations of § 211(g) of the Act, 42 U.S.C. § 7545(g).

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.

6. After considering the gravity of the alleged violations, Respondent's history of compliance with the regulations, EPA has determined to remit and mitigate the civil penalty to \$12,000 subject to successful completion of the terms of this Agreement.

Respondent agrees to pay \$12,000 to the United States of America within thirty (30) days of from the date that this Agreement is executed by EPA ("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 as 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 agrees to pay the amount by certified check or cashier's check 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 - 4725

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 - 4725

7. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 6 of this Agreement, Respondent agrees to pay a stipulated penalty of \$25,000 and the amount of the economic benefit or savings resulting from the violations. 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.

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

9. Respondent hereby represents 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.

10. 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.

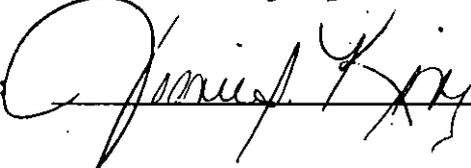
11. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

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

13. 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 § 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 Respondent of responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

Evans Lumber Company, Inc.

by: 

Date: 12-4-97

United States
Environmental Protection Agency

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

Date: 2/25/98



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUL 30 1997

Mr. John M. Evans, President
Evans Lumber Company, Inc.
527 West Main Street
P.O. Box 25
Waverly, Virginia 23890

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Re: File No. AED/MSEB - 4725

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

Dear Mr. Evans:

On December 18, 1996, authorized representatives of the United States Environmental Protection Agency ("EPA") inspected Evans Lumber Company, Inc., ("Evans") located at 527 West Main Street, Waverly, Virginia. The inspection was conducted to determine compliance with § 211(g) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(g), and the regulations issued thereunder (40 C.F.R. Part 80). The misfueling provision of the Act provides that no person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 percent (by weight). 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. 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.

During the inspection, samples of diesel fuel were taken from Evans' above ground storage tank and from the propulsion tanks of three (3) of Evans' 1974 Mack Trucks. The diesel fuel found in the storage tank had a sulfur content of .1756 wt. percent; Truck # 1, VIN: 457240G510572, had a sulfur content of .1762 wt. percent; Truck # 2, VIN: MB607T4015, had a sulfur



Recycled/Recyclable
Printed with Soy/Canola Ink on paper that
contains at least 75% recycled fiber

content of .1805 wt. percent; and, Truck # 3, VIN: R685ST37023, had a sulfur content of .1762 wt. percent. As a result of the inspection, EPA has determined that Evans introduced or caused or allowed the introduction into the three motor vehicles described above diesel fuel whose sulfur content exceeded the 0.05 wt. percent standard. Therefore, Evans is liable for at least three (3) violations of § 211(g) of the Act, 42 U.S.C. § 7545(g).

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 violations. In determining the appropriate penalty for the noticed violations, 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 Clean Air Act, actions taken by you to remedy the violations 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 violations 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 violations were 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

Enclosure

REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF THE
CLEAN AIR ACT, 42 U.S.C. § 7414

Re: File No. AED/MSEB - 4725

Section 114(a) of the Act, 42 U.S.C. § 7414(a), provides that " the Administrator may require any person.... who is subject to any requirement of this Act ...to make such reports ... and provide such other information, as the Administrator may reasonably require." Respondent is subject to the requirements and prohibitions of the diesel fuel desulfurization requirements of section 211(g) and (i) of the Act, 42 U.S.C. § 7545(g) and (i) and thereby is also subject to the informational requirements of section 114(a) of the Act.

Pursuant to the authority contained in section 114 of the Act, 42 U.S.C. § 7414, provide the following information for Evans Lumber Company, Inc. ("Evans") and its subsidiaries, parents, affiliates or related companies:

1. We are assuming that Evans and its affiliates and subsidiaries income before expenses or deductions is over \$10 Million. If you do not agree, submit your financial statements for the prior three fiscal years and this year current to date including but not limited to balance sheets, profit and loss statements, statements of changes in position, and federal income tax returns.
2. Provide a comprehensive description of Evans and its affiliates and subsidiaries., including its business operations in Virginia, North Carolina, and other states.
3. Identify Evans' corporate officers and board of directors.
4. Provide a complete list and full description of all motor vehicles that are owned, leased, operated, or controlled by Evans Lumber Company, Inc. and/or its marketing subsidiaries. The description of the vehicle should include the manufacturer's vehicle identification number ("VIN"), the make and model year of vehicle, license plate number, and any company identification number.

5. Provide a complete list and full description of all engines or equipment that uses diesel fuel from the above ground storage tank located at 527 West Main Street, Waverly, Virginia.

6. For any motor vehicle that used low sulfur diesel fuel, provide receipts of purchase of fuel.

7. Documents demonstrating Respondent's safeguards and management oversight to prevent high sulfur diesel fuel from being used in motor vehicles.

8. Documents demonstrating what actions were taken to remedy the violations, including the disposition of non-complying gasoline, and to ensure that similar types of violations are less apt to occur in the future.

9. Any and all other information indicating that remission or compromise of the civil penalty is appropriate. You may elect to provide a statement of the cause of the violation, if known, and any mitigating factors you desire to bring to our attention.

The response to this request shall be full, complete, and to the best of your knowledge. A reply which is false, misleading, or made without regard to its veracity is, in our judgment, equivalent to a refusal to submit information. In order for us to proceed expeditiously with our enforcement docket, your response must be submitted within fifteen days after the date of this letter. If you encounter difficulty in responding to this request within this time frame, please contact the case attorney identified herein. Absent a written extension of the required response date, your failure to respond by the date set forth may lead to immediate enforcement action and a lost opportunity for early settlement of this matter. EPA's enforcement options include the issuance of a compliance order by the Administrator under section 113(a) of the Act, or the filing of a civil action seeking a permanent or temporary injunction, or a civil penalty of not more than \$25,000 per day of violation, or both, under section 113(b) of the Act. Please be aware that a knowing or willful submission of false, fictitious, or fraudulent statements or representations may subject you to possible criminal liability for filing false statements.

Pursuant to EPA regulations appearing at 40 C.F.R. Part 2, you are entitled to assert a confidentiality claim covering any part of the submitted information. If you do not assert such a claim, the submitted information may be available to the public without further notice. Information subject to a business confidentiality claim may be made available to the public only to the extent set forth in the above cited regulations.