

UNITED STATES
U.S. ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.

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In the Matter of:)	
)	
E-Z Serve Management Company,)	File No. AED/MSEB - -14689
)	
Respondent)	Settlement Agreement
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THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereinafter "EPA") and E-Z Serve Management Company, located 2550 North Loop West, Suite 600, Houston, Texas (Hereinafter "Respondent").

Preliminary Statement

1. On March 25, 1997, a Notice of Violation was issued to Respondent, simultaneously with this Settlement Agreement, alleging that Respondent violated §211(h) of the Clean Air Act, 42 U.S.C. § 7545(h). The Notice stated that Respondent, through its employees or agents, on eighteen (18) separate occasions in 1992, supplied gasoline with a Reid vapor pressure ("RVP") in excess of the applicable standard to a retail gasoline station located in Victoria, Texas, in violation of the regulations implementing section 211(h) of the Act.

2. Pursuant to § 211(d), 42 U.S.C. § 7545(d), violators of the regulations implementing § 211(h) of the Act may be liable for a civil penalty of not more than \$25,000 for every day of

such violation and the amount of economic benefit or savings resulting from the violation. In the Notice of Violation, EPA proposed the reduced civil penalty of Eighty-One Thousand Dollars (\$81,000).

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

5. 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 engaged in the business of distributing, transporting and selling gasoline within the meaning of 40 C.F.R. § 80.2.

b. As a result of an EPA investigation of the RVP of gasolines, it was determined that on eighteen (18) separate occasions in 1992 Respondent, through its employees or agents,

took title to, transported, or delivered to Victoria, Texas, gasoline that exceeded the applicable Reid vapor pressure as prohibited by 40 C.F.R. § 80.27. Respondent neither admits nor denies liability for this violation.

c. Respondent has implemented a compliance monitoring oversight program to prevent similar violations from occurring in the future.

d. Jurisdiction to settle this matter exists pursuant to § 203 of the Act, 42 U.S.C. § 7522, and other provisions of law.

6. After considering the gravity of the alleged violations, Respondent's history of compliance with § 7545(h) of the Act, the circumstances of this case, the terms of this Agreement, and other facts presented by Respondent, EPA has determined to conditionally reduce the proposed civil penalty to Forty-Eight Thousand Six Hundred Dollars (\$48,600) pending successful completion of the terms of this Agreement.

Accordingly:

- a) Respondent agrees to pay Forty-Eight Thousand Six Hundred Dollars (\$48,600).
- b) The due date for payment shall be thirty (30) days from the date Respondent receives a fully-executed copy of this Agreement. As noted below, time is of the essence.

c) In accordance with §3717 of the Debt Collection Act of 1982, 31 U.S.C. § 3717, if the debt is not entirely paid within thirty (30) days following the due date, interest will accrue from the due date through the date of actual payment. Interest will be computed in accordance with section 3717(a) of the Debt Collection Act. A late payment handling charge of Twenty Dollars (\$20) will also be imposed if the amount due is not paid within one month of the due date, with an additional charge of Ten Dollars (\$10) for each additional thirty (30) day period.

d) Respondent agrees to pay this amount by cashier's or certified check payable to the "Treasurer - 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 - No.

Copies of this check shall be forwarded to David E.

Alexander at the following address:

David E. Alexander
Mobile Source Enforcement Branch
U.S. Environmental Protection Agency
401 M Street, S.W. (Mailcode 2242-A)
Washington, D.C. 20460

7. **Time is of the essence to this Agreement.** If Respondent does not pay the amount specified in paragraph 6(a), OR if respondent pays the amount specified in paragraph 6(a) more than thirty (30) days after the date specified in paragraph 6(b) or upon Respondent's default or failure to comply with any other term of this Settlement Agreement, the entire proposed penalty of Eighty one thousand dollars (\$81,000) ("the new debt amount") shall be immediately due and owed as a debt. The interest charges and other penalties and fees specified in paragraph 6(c) shall be applied to the new debt amount starting on the date specified in paragraph 6(b) and will continue to accrue until the debt is paid in full. The parties agree that upon such default or failure to comply, EPA, at its sole discretion, may commence an action to enforce this Settlement Agreement for the new debt amount or may proceed in an action based on the original claim of violations of section 211(k) of the Act, 42 U.S.C. § 7545(k) and may pursue any other remedies available to it. Respondent expressly waives its right to assert that any action under this paragraph 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 on 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, its officer, agents, directors, owners, heirs, assigns and successors.

10. Subject to the provisions of paragraph 7, above, 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.

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.

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 for violations of section 211(h) of the Clean Air Act, 42 U.S.C.

§7545(h), which are not the subject matter of this Agreement, or for any other violations of law.

The following agree to the terms of this Agreement:

E-Z SERVE MANAGEMENT COMPANY

By H. E. Lambert

Date: 3/12/97

Name H. E. Lambert

Title V.P.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By Anna M. Pontius
for Bruce Buckheit, Director
Air Enforcement Division

Date: 3/24/97

By David E. Alexander

Date: 3/20/97

David E. Alexander
Attorney/Advisor
Mobile Source Enforcement Branch