

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

_____)	
In the Matter of:)	
_____)	
DANIEL KARCZWSKI, OWNER)	SETTLEMENT AGREEMENT
Danny's South Side Service)	
_____)	
Respondent.)	AED/MSEB - 4857
_____)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Daniel Karczowski, Owner of Danny's South Side Service, 4230 S. Howell Avenue, Milwaukee, Wisconsin 53207 (hereafter "Respondent").

Preliminary Statement

1. On December 28, 1998, a Notice of Violation ("Notice") was issued to Respondent for a violation of § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the reformulated gasoline ("RFG") regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). See Attachment 1. This law provides that only RFG may be sold in a covered area and sets out certain minimum and maximum standards for such gasoline. This law also provides that no person shall manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline represented as reformulated and intended for sale or use in any covered area unless such gasoline meets the applicable standards specified in 40 C.F.R. § 80.41. Violators of this law are subject to a maximum civil penalty of \$25,000 per day for each violation and the amount of the economic benefit or savings resulting from the violation.

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 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 retailer as defined within the meaning of 40 C.F.R. § 80.2.

b. On June 26, 1998, an approved EPA compliance survey was conducted at Respondent's retail outlet, located at 4230 S. Howell Avenue, Milwaukee, Wisconsin. This retail outlet is located in the VOC Control Region 2 reformulated gasoline covered area where the minimum VOC emissions performance reduction ("VOC-EPR") standard is 13.1 percent.

c. As a result of the inspection, EPA determined that Respondent's retail outlet was selling, offering for sale, and dispensing gasoline represented to be reformulated that had a VOC-EPR of -178.03 percent.

d. Where the gasoline contained in any storage tank at any retail outlet is found in violation, the retailer shall be deemed in violation. Therefore, Respondent is liable for one (1) violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a)(1).

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.

4. After considering the gravity of the alleged violation, Respondent's history of compliance with the regulations, and Respondent's size of business, EPA has determined to remit and mitigate the civil penalty to \$2,365 subject to successful completion of the terms of this Agreement.

Respondent agrees to pay \$2,365 to the United States of America in four (4) consecutive quarterly payments of five hundred ninety-one dollars and twenty-five cents (\$591.25). The first payment shall be due within thirty (30) days from the date that this Agreement is executed by EPA and returned to Respondent by

certified mail return receipt requested ("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 at 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 check made payable to the "United States of America," and to mail the payments to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn.: AED/MSEB - 4857

A photocopy of the checks 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 - 4857

5. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 4 of this Agreement, Respondent agrees to pay a stipulated penalty of \$4,730. This stipulated penalty is in addition to the proposed penalty. 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.

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

7. 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.

8. 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.

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 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:

Daniel Karczewski, Owner
Danny's South Side Service

by: *Daniel Karczewski*

Date: 2-15-99

United States
Environmental Protection Agency

by: *Bruce C. Buckheit*

Date: 4/1/99

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

ATTACHMENT 1



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

DEC 28 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Daniel Karczewski, Owner
Danny's South Side Service
4230 S. Howell Avenue
Milwaukee, Wisconsin 53207

Re: File No. AED/MSEB - 4857

Dear Mr. Karczewski:

On June 26, 1998, an approved U.S. Environmental Protection Agency ("EPA") compliance survey was conducted at your retail outlet, located at 4230 S. Howell Avenue, Milwaukee, Wisconsin 53207. The survey was conducted to determine compliance with section 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(k), and the regulations issued thereunder (40.C.F.R. part 80, subpart D). 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.

The applicable regulations provide that no person may manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline represented as reformulated and intended for sale or use in any covered area unless such gasoline meets the applicable standards specified in 40 C.F.R. § 80.41. 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.

As a result of the inspection, EPA has determined that your retail outlet, which is located in the VOC-Control Region 2 reformulated gasoline covered area, was selling regular gasoline in violation of 40 C.F.R. § 80.78(a)(1) in that the regular gasoline failed to meet the minimum VOC emissions performance reduction percentage standard specified in 40 C.F.R. § 80.41. The gasoline had a VOC emission performance reduction of -178.03 percent which violates the minimum VOC emissions performance reduction of 13.1 percent for VOC-control Region 2. As the retailer who owns, leases, operates, controls or supervises the retail outlet where the violation was found, you are liable for violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a)(1).

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 such violation and the economic benefit or savings resulting from the violation. Section 205(c) further authorizes the Administrator to compromise or remit, with or without conditions, any such penalty. After consideration of the magnitude and the gravity of the violation, the apparent size of your business, and your history of compliance with the Fuels Regulations, we propose a civil penalty for the violation alleged in this Notice of \$4,730.

The U.S. Environmental Protection Agency encourages settlement of such matters rather than initiating litigation in the federal courts. The settlement process provides substantial flexibility for reducing the statutory penalty, particularly if the alleged violation is 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. Please contact her regarding this Notice of Violation.

Jocelyn L. Adair, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch (2242-A)
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,

A handwritten signature in cursive script that reads "Richard Biondi". The signature is written in dark ink and is positioned above the typed name.

Bruce C. Buckheit, Director
Air Enforcement Division