

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C.

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In the matter of: )  
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**KOCH PETROLEUM GROUP, L.P.** )  
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 )  
Respondent. )  
\_\_\_\_\_ )

File No. MSEB/AED - 4867  
  
SETTLEMENT AGREEMENT

**THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and KOCH PETROLEUM GROUP, L. P. (Respondent).**

Preliminary Statement

1. On February 3, 1999, a Notice of Violation (NOV) was issued to Respondent alleging that on two occasions 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
  - a. from April 26, 1997 through July 21, 1997, Respondent was manufacturing, selling, distributing, offering for sale or distribution, dispensing, supplying, offering for supply, storing, transporting or causing the transportation of 89 octane gasoline represented to be reformulated and intended for sale or use in a reformulated gasoline covered area, and during this time period, the 89 octane gasoline failed to meet the applicable minimum oxygen standard of 1.5 wt %.

As the distributor and oxygenate blender of the gasoline, Respondent is liable for this violation.

- b. On May 26, 1998, Respondent was manufacturing, selling, distributing, offering for sale or distribution, dispensing, supplying, offering for supply, storing, transporting or causing the transportation of 87 octane gasoline represented to be reformulated and intended for sale or use in a reformulated gasoline covered area which was in violation of 40 C.F.R. § 80.78(a)(1) in that it failed to meet the applicable minimum VOC Emission Performance Reduction standard of 13.1 %. As the distributor and oxygenate blender of the gasoline, Respondent is liable for this violation.

The NOV further stated that the statutory civil penalty is Twenty-Seven Thousand Five Hundred Dollars (\$27,500) per day for each such violation plus the amount of economic benefit or savings resulting from the violation pursuant to § 211(d) of the Act, 42 U.S.C. § 7545(d).

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 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.
4. The parties stipulate and agree to the following:
  - a. At all relevant times Respondent was both

- i. a distributor within the meaning of 40 CFR § 80.2 (l) and
  - ii. an oxygenate blender within the meaning of 40 CFR § 80.2 (mm).
- b. On July 21, 1997, authorized representatives of the U.S. Environmental Protection Agency ("EPA") inspected Respondent's terminal located at 9343 North 107th Street, Milwaukee, Wisconsin. The inspection determined that from April 26, 1997 through July 21, 1997, Respondent, at its Milwaukee terminal, had manufactured, sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, stored, transported or caused the transportation of 89 octane gasoline represented to be reformulated and intended for sale or use in a reformulated gasoline covered area, and during this time period, the 89 octane gasoline failed to meet the applicable minimum oxygen standard specified in 40 C.F.R. § 80.41, in violation of 40 C.F.R. § 80.78(a)(1). The gasoline was improperly blended and left the terminal without the addition of oxygen (in this case, ethanol). The minimum standard for oxygen is 1.5 wt%. This constitutes a violation of 40 C.F.R. § 80.78(a)(1).
- c. On May 26, 1998, authorized representatives of the U.S. Environmental Protection Agency ("EPA") inspected Respondent's terminal located at 9343 North 107th Street, Milwaukee, Wisconsin. EPA maintains that the inspection determined that on May 26, 1998, Respondent was selling, and offering for sale or distribution 87 octane gasoline from Tank #510 represented to be reformulated and intended for sale or use in a reformulated gasoline covered area which was in violation of 40 C.F.R. § 80.78(a)(1) in that it failed to meet

the applicable minimum VOC Emission Performance Reduction standard specified in 40 C.F.R. § 80.41. The gasoline had a VOC emissions performance reduction of 0.311% which is less than the minimum standard of 13.1%.

- d. EPA further determined that Respondent was liable for the violations pursuant to 40 CFR § 80.78. as the oxygenate blender and distributor of the gasoline, pursuant to 40 C.F.R. § 80.79(a)(1).
- e. Respondent admits the 1997 violation described at “b” of this paragraph; Respondent neither admits nor denies the 1998 violation, described at “c” of this paragraph.
- 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.
- g. 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.

5. After considering the gravity of the alleged violation, Respondent's history of compliance, the terms of this Agreement, and other facts presented by Respondent, EPA has determined to conditionally mitigate the civil penalty to Sixty-Seven Thousand Five Hundred Dollars (\$67,500.00). Respondent agrees to pay Sixty-Seven Thousand Five Hundred Dollars (\$67,500.00) within thirty days of receipt of a signed settlement agreement from EPA. In the event Respondent does not receive a copy of this Agreement within thirty (30) days following its execution by EPA, the due date shall be thirty (30) days following the date of 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. Respondent agrees to pay this amount by cashier's check or certified check with the notation "AED/MSEB - 4867" 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 - 4867

A copy of this check shall be forwarded to Angela E. Fitzgerald, at the following address:

Angela E. Fitzgerald, Attorney/Advisor  
U.S. Environmental Protection Agency  
401 M Street, SW (2242A)  
Washington, D.C. 20460

6. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 5 of this Agreement, or upon default of or failure to comply with any terms of this Agreement by Respondent, the parties agree that upon such default of failure to comply, 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. Respondent specifically agrees that in the event of such default or failure to comply, EPA may

proceed in an action based on the claim of violations of § 203 of the Act, 42 U.S.C. § 7522, 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 the passage of time.

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

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

9. 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.

10. 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.

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

12. 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 § 203 of the Clean Air Act, 42 U.S.C. § 7522, which are not the subject matter of this Agreement; or for other violations of law.

The following agree to the terms of this Agreement:

**KOCH PETROLEUM GROUP, L.P.**

by: Bob O'Hair <sup>gkv</sup> Date: 9-14-99  
Vice President, Operations

**United States  
Environmental Protection Agency**

by: Richard Burch/L Date: 9/27/99  
Bruce C. Buckheit  
Director, Air Enforcement Division  
Office of Enforcement and Compliance Assurance