

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.

In the Matter of:)	
)	
Morel G. Lemoine Distributors, Inc.)	File No. AED/MSEB - 4670
)	
Respondent.)	SETTLEMENT AGREEMENT
)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereinafter "EPA") and Morel G. Lemoine Distributors, Inc. (hereinafter the "Respondent").

A. Preliminary Statement

1. On September 30, 1996, a Notice of Violation was issued to the Respondent alleging that the Respondent violated section 211 of the Clean Air Act ("the Act"), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80. The Notice stated that on June 21, 1996, gasoline having a Reid vapor pressure (hereinafter "RVP") greater than 7.8 pounds per square inch (hereinafter "psi") was sold, offered for sale or dispensed from three separate gasoline storage tanks at the Road Runner Mini Mart retail gasoline outlet located at 7111 Airline Highway, in the Baton Rouge, Louisiana metropolitan area, in violation of 40 C.F.R. § 80.27 (hereinafter the "Volatility" Regulation). The Notice also alleged that gasoline was delivered to a farm gasoline storage tank on June 18, 1996 that exceeded the 7.8 RVP

limit. The Notice also stated that the Respondent, as the gasoline distributor, was liable for this violation.

2. After considering the gravity of the alleged violations, the size of Respondent's business, and the Respondent's history of compliance under the Volatility Regulation, the EPA proposed in the Notice a civil penalty of Nineteen Thousand Five Hundred Dollars (\$19,500) (hereinafter "the proposed penalty").

3. The EPA and the Respondent desire to settle this matter according to the mutual covenants and agreements contained herein. The consideration is acknowledged to be adequate, and the EPA and the Respondent agree as set forth herein.

B. Terms of Agreement

1. The EPA and the Respondent 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. The EPA and the Respondent 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, the Respondent was a distributor within the meaning of 40 C.F.R. § 80.2(1).

b. On June 21, 1996, inspectors for the Louisiana Department of Environmental Quality inspected the Road Runner Mini Mart gasoline retail outlet located at 7111 Airline Highway, Baton Rouge, Louisiana. During the inspection, the inspectors took

samples of gasoline contained in three storage tanks at the retail outlet and the samples were subsequently analyzed to determine the RVP. As a result of that analysis, the three samples were all found to violate the 7.8 RVP standard under 40 C.F.R. § 80.27. The EPA investigation confirmed that the three storage tanks had received gasoline from the respondent with RVP that exceeded the 7.8 standard. EPA also determined that gasoline with RVP that exceeded the 7.8 standard was distributed by respondent to a farm gasoline tank in the Baton Rouge area.

c. Upon notification of its RVP violations, Respondent took steps to ensure further violations had not occurred and took steps to prevent violations in the future, including presenting correct and complete information on its invoices, conducting employee training, and issuing a written reprimand to the employee that respondent asserts accidentally caused the violations. Respondent has also posted a map at its facility which clearly indicates which areas are subject to the 7.8 RVP standard and which are subject to the 9.0 RVP standard.

d. Respondent demonstrated that the farm tank to which it allegedly delivered gasoline that exceeded the 7.8 RVP standard had a capacity of less than 550 gallons and therefore the farm facility was not a facility subject to the volatility regulation.

e. Jurisdiction to settle this matter exists pursuant to § 211 of the Act, 42 U.S.C. § 7545, 40 C.F.R. Part 80, and other provisions of law.

3. After considering the gravity of the violations, the Respondent's history of compliance with the Volatility Regulation, the circumstances of this case, the Respondent's ability to continue in business, the terms of this Agreement, and

other facts presented by the Respondent, the EPA has determined to conditionally remit and mitigate the proposed civil penalty to Six Thousand Dollars (\$6,000) pending successful completion of the terms of this Agreement. The Respondent agrees to pay Six Thousand Dollars (\$6,000). The due date shall be sixty (60) days from the date the Agreement is signed by the EPA. In accordance with section 3717 of the Debt Collection Act of 1982, 31 U.S.C. § 3717 if the debt is not paid within thirty 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 \$20.00 will also be imposed if the amount due is not paid by the due date, with an additional charge of \$10.00 for each thirty-day period. The Respondent agrees to pay the amount due by cashier's check or certified check payable to the "United States of America" and mailed to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
ATTN: AED/MSEB - 4670

A copy of the check shall be forwarded simultaneously to Ervin B. Pickell at the following address:

Ervin B. Pickell
U.S. Environmental Protection Agency
Western Field Office
12345 West Alameda Parkway, Suite 214
Denver, CO 80228

4. Timely performance is essential to this Agreement. Upon failure to timely perform pursuant to paragraphs B(3) or B(4) of this Agreement, or upon default of or failure to comply with any terms of this Agreement by the Respondent, the entire proposed civil penalty of Nineteen Thousand Five Hundred Dollars (\$19,500)

shall be due and owing. The parties agree that upon such default or failure to comply, the EPA may refer this matter to the United States Attorney General for collection pursuant to § 211(d) of the 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 Act; or pursue any other remedies available to it. The Respondent specifically agrees that in the event of such default or failure to comply, the EPA may proceed in an action based on the original claim of violation 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.

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

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

7. 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 consented to herein.

8. The terms of this Agreement are contractual and are not mere recitals. 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.

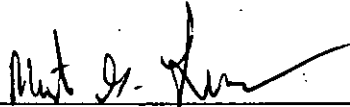
9. The validity, enforceability and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

10. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved. 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 Act, 42 U.S.C. § 7545, which are not the subject matter of this Agreement; or for other violations of law.

The following agree to the terms of this Agreement:

Morel G. Lemoine Distributors, Inc.

by:




[Typed Name] Martin G. Lemoine
[Typed Title] President

Date:

4-7-97

United States
Environmental Protection Agency

by:


Bruce C. Buckheit, Director
Air Enforcement Division

Date:

6/6/97