

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

\_\_\_\_\_  
In the Matter of: )  
 )  
Maritank Philadelphia, Inc. )  
 )  
Respondent. )  
\_\_\_\_\_

**SETTLEMENT AGREEMENT**  
**AED/MSEB - 5008**

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Maritank Philadelphia, Inc., 1818 Market Street, Philadelphia, Pennsylvania 19103 (hereafter "Respondent").

**Preliminary Statement**

1. On September 29, 1999, a Notice of Violation ("Notice") was issued to Respondent alleging 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 \$27,500 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 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.

4. By entering into this Agreement, Respondent does not admit the facts alleged herein nor that it is in any way responsible for the alleged violation or that a violation has occurred.

5. The parties stipulate and agree to the following matter only for purposes of this Agreement and any proceeding initiated by EPA to enforce the terms of this Agreement.

a. At all relevant times, Respondent was a distributor as defined within the meaning of 40 C.F.R. § 80.2.

b. On September 1, 1998, an EPA approved compliance survey was conducted at two retail outlets: Turkey Hill Mint Market, located at 3026 Horseshoe Pike, Honey Brook, PA; and, Knapp's Service Station, Inc., located at 1196 Easton Road, Roslyn, PA.

c. As a result of the inspections, EPA determined that Maritank sold and supplied to the two retail outlets regular gasoline that failed to meet the minimum RFG standard for oxygen specified at 40 C.F.R. § 80.41.

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

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 violation, Respondent's history of compliance with the regulations, EPA has determined to remit and mitigate the civil penalty to \$10,000 subject to successful completion of the terms of this Agreement.

Respondent agrees to pay \$10,000 to the United States of America 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"). Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717.

Respondent agrees to pay the amount by check made 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 - 5008

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 - 5008

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 \$20,000. This stipulated penalty is in addition to the proposed penalty. Upon such default this amount shall be immediately due and owing. Respondent further agrees 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 executed by EPA, at which time a copy will be returned to Respondent.

9. Respondent hereby represents that the individual or individuals executing the Agreement on behalf of Respondent is 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 the matters consented to herein.

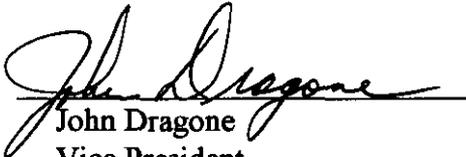
11. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

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.

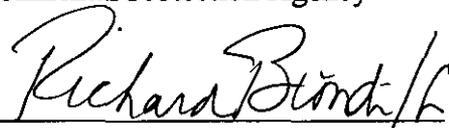
The following agree to the terms of this Agreement:

Maritank Philadelphia, Inc.

by:   
John Dragone  
Vice President  
Maritank Philadelphia, Inc.

Date: 12 November 1999

United States  
Environmental Protection Agency

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

Date: 12-3-99

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

SEP 29 1999

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCECERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Richard Steady, Compliance Officer  
Maritrans Philadelphia, Inc.  
West Bank Schuylkill River and Ft. Mifflin Road  
Philadelphia, Pennsylvania 19153

Re: File No. AED/MSEB -5008  
Clean Air Act Notice of Violation

Dear Mr. Steady:

On September 1, 1998, a reformulated gasoline ("RFG") survey inspection was conducted at two (2) retail outlets that were supplied with gasoline from your Maritank Philadelphia, Inc. ("Maritank") terminal located at 67<sup>th</sup> and Schuylkill River, Philadelphia, Pennsylvania 19153. The inspections were conducted at Turkey Hill Minit Market, located at 3026 Horseshoe Pike, Honey Brook, PA and Knapp's Service Station, Inc., located at 1196 Easton Road, Roslyn, PA. The inspections were 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.

EPA regulations require that gasoline sold or used in RFG covered areas must meet the standards specified for RFG. However, EPA has determined that gasoline sold by Maritank and supplied to the retail outlets, failed to meet the RFG standard for oxygen specified in 40 CFR § 80.41. In particular, the regular gasoline had an oxygen content of 1.09 weight percent which violates the minimum 1.5 weight percent standard. As a distributor who sold or supplied the gasoline to the retail outlets, Maritank is liable for violating 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize EPA to assess a civil penalty of up to \$27,500 per day for each such violation plus the economic benefit or savings resulting from the violation. In determining the appropriate penalty for a violation such as this we consider the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of your business, your history of compliance with the Act, actions taken by you to remedy the violation and prevent future violations, the effect of the penalty on your ability to continue in business and other matters as justice may require. Based on these factors, we propose a civil penalty of \$12,100 for the violations alleged in this Notice.

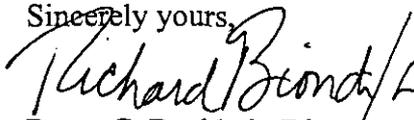
We encourage early settlement of matters such as this. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violation is corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court.

Please contact the EPA attorney designated below regarding this Notice:

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

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, Director  
Air Enforcement Division