

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

In the Matter of:

McBurnie Oil Company
P.O. Box 300
Route 117
Denmark, ME 04022

Respondent.

AED/MSEB Case No. 4651

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency ("EPA") and McBurnie Oil Company ("McBurnie Oil" or "Respondent") located in Denmark, Maine.

Preliminary Statement

1. On September 13, 1996, EPA issued a Notice of violation ("Notice") to Respondent for violations of § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(k), and the regulations promulgated thereunder at 40 CFR Part 80, Subpart D ("reformulated gasoline regulations"). The Notice stated that on July 17, 18, and 19, 1995, authorized representatives of EPA inspected records at the Village Tie Up ("Village") retail station in Harrison, Maine, the Cornish Country Gas retail station in Cornish, Maine, G.W. Jewett & Sons in Cornish, Maine, and Respondent's facility in Denmark, Maine. On June 6, 1996, an inspector from EPA returned to Village and McBurnie Oil to review additional records. As a result of the inspections, EPA

determined that on eighteen separate occasions between December 1, 1994 and July 17, 1995, McBurnie Oil had distributed gasoline that did not meet applicable reformulated gasoline ("RFG") standards to retail stations and wholesale purchase-consumers in areas requiring RFG. In addition, EPA determined that during this same time period, McBurnie Oil failed to provide correct product transfer documents, in that McBurnie Oil failed to provide documents identifying the gasoline as conventional or reformulated, and, in the case of conventional gasoline deliveries, failed to include a statement that, "This product does not meet the requirements for reformulated gasoline, and may not be used in any reformulated gasoline area."

2. The reformulated gasoline regulations prohibit any person, including a distributor, from selling or distributing, offering for sale or distribution, dispensing, supplying, offering for supply, transporting or causing the transportation of any gasoline represented as reformulated and intended for sale or use in any reformulated gasoline covered area unless such gasoline meets the applicable reformulated gasoline standards. In addition, the regulations require that the on each occasion when any person transfers custody or title to any reformulated gasoline, other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or whole-sale purchaser-consumer facility, the transferor must provide to the transferee documents which identify the gasoline as conventional or reformulated and specify, among other things, the maximum benzene

content, the minimum and maximum oxygen content, and, in the case of VOC-controlled gasoline, the maximum RVP. In the case of conventional gasoline, on each occasion when any person transfers custody or title to any gasoline, the transferor must provide to the transferee documents which include, among other things, the statement that, "This product does not meet the requirements for reformulated gasoline, and may not be used in any reformulated gasoline area." Violations of these regulations may subject the violator 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.

3. Based on the documents obtained during the inspections and from McBurnie Oil's response to the "Request for Information Pursuant to Section 114 of the Clean Air Act" issued as an attachment to the September 13, 1996 Notice, EPA notified Respondent on February 5, 1997 that it proposed a civil penalty of Twenty-Four Thousand Four Hundred Dollars (\$24,400) ("the proposed penalty").

4. The parties, desiring to settle the violations cited in EPA's Notice of September 13, 1996, in consideration of the mutual covenants and agreements contained in this document, agree as set forth in this document.

Terms of Agreement

5. The parties agree that settlement of this matter is in the public interest and that this Settlement Agreement is the most appropriate means of resolving the matter.

6. 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 distributor as defined within the meaning of 40 CFR § 80.2.

b. On July 17, 18, and 19, 1995, authorized representatives of EPA inspected records at the Village Tie Up retail station in Harrison, Maine, the Cornish Country Gas retail station in Cornish, Maine, G.W. Jewett & Sons in Cornish, Maine, and Respondent's facility in Denmark, Maine. On June 6, 1996, an inspector from EPA returned to Village and McBurnie Oil to review additional records.

c. Based on these inspections, EPA has determined that on eighteen separate occasions between December 1, 1994 and July 17, 1995, McBurnie Oil had distributed gasoline that did not meet applicable RFG standards to retail stations and wholesale purchase-consumers in areas requiring RFG in violation of 40 CFR § 80.78(a)(1). In addition, EPA has determined that between December 1, 1994, and July 17, 1995, McBurnie Oil failed to provide correct product transfer documents in violation of 40 CFR 80.77 and 80.106, in that McBurnie Oil failed to provide documents identifying the gasoline as conventional or reformulated, and, in the case of conventional gasoline deliveries, failed to include a statement that, "This product

does not meet the requirements for reformulated gasoline, and may not be used in any reformulated gasoline area." As a result, EPA has determined that Respondent is liable for violating section 211(k) of the Act, 42 U.S.C.

§ 7545(k).

d. Respondent warrants that it has taken action to insure conventional gasoline will not be delivered to retail stations and wholesale purchase-consumers in reformulated gasoline covered areas. Respondent also warrants it has taken action to insure that proper product transfer documents will be provided with each gasoline delivery.

e. Jurisdiction to settle this matter exists pursuant to sections 205 and 211 of the Clean Air Act, 42 U.S.C. §§ 7524 and 7545, and other provisions of law.

7. After considering the gravity of the alleged violations, Respondents' history of compliance with the Act and the regulations, the terms of this Settlement Agreement, and other facts presented by Respondent, EPA has decided to conditionally remit and mitigate the proposed penalty to Sixteen Thousand Dollars (\$16,000) pending successful completion of the terms of this Settlement Agreement.

a. Respondent agrees to pay the sum of Sixteen Thousand Six Hundred and Twenty-Eight Dollars (\$16,628) in four quarterly installments of Four Thousand One Hundred and Fifty-Seven Dollars (\$4,157). The due date for the first payment of \$4,157 shall be thirty (30) days following the date that this

Agreement is executed by EPA. In the event that Respondent does not receive a fully executed copy of this Agreement within thirty days of the date of execution by EPA, the due date for the first payment shall be due thirty (30) days from the date respondent receives a fully executed copy of this Agreement. Thereafter, every 90 days from the due date of the first payment, Respondent agrees to pay the sum of \$4,157 until the penalty is paid in full.

b. In accordance with section 3717 of the Debt Collection Act of 1982, 31 U.S.C. § 3717, if an installment payment is not entirely made 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 twenty dollars (\$20.00) will also be imposed if payment is not made within thirty days of the due date, with an additional charge of ten dollars (\$10.00) for each subsequent thirty day period.

c. Respondent agrees to pay these amounts by certified check or cashier's 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 - 4651

A photocopy of the check shall be forwarded to:

Bruce Fergusson, Attorney/Advisor
U.S. Environmental Protection Agency
Air Enforcement Division (2242A)
401 M Street, S.W.
Washington, D.C. 20460
Attn: AED/MSEB - 4604

8. Time is of the essence to this Agreement. If Respondent is more than 60 days late in paying the amounts specified in paragraph 7, or upon default under or failure to comply with any other terms of this Settlement Agreement by Respondent, the entire proposed penalty of Twenty Four Thousand Four Hundred Dollars (\$24,400) shall be immediately due and owing. The interest charges and other penalties and fees specified in paragraph 7 shall be applied to this amount effective from the date that the missed payment was due (or the date that Respondent violated any other provision of this Settlement Agreement) and will continue until the debt is paid in full. The parties agree that upon such default or failure to comply, EPA may commence an action to enforce this Settlement Agreement or to proceed in an action based on the original claim of violations of section 211(k) of the Act, 42 U.S.C. § 7545(k); or pursue any other remedies available to it. 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.

9. This Agreement becomes effective upon the date that EPA signs it, at which time a copy will be returned to Respondent.

10. 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.

11. 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 in this Agreement.

12. 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.

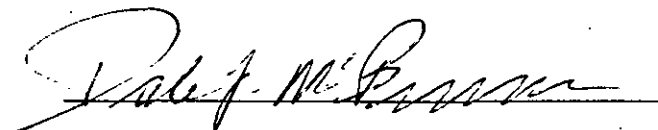
13. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

14. Upon completion of the terms of this Agreement, the civil violations cited in EPA's Notice to Respondent of September 13, 1996 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, that are not the subject matter of this Agreement; 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 regulation.

15. Any modifications of this Agreement must be in writing and agreed upon by both parties to the Agreement.

We hereby consent and agree to the above terms:

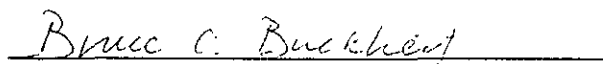
FOR RESPONDENT



Date: 3/10/97

Dale J. McBurnie
President
McBurnie Oil Company

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



Date: 4/14/97

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