

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C.

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In the matter of: )  
QuikTrip Corporation ) File No. MSEB/AED - 6054  
Respondent. ) SETTLEMENT AGREEMENT AND  
                         ) AUDIT POLICY DETERMINATION  
)

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THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereinafter "EPA") and QuikTrip Corporation located at 901 North Mingo Road, P.O. Box 3475, Tulsa, OK 74101-3475 (hereinafter "Respondent").

I. Preliminary Statement

1. On February 5, 2001, Respondent provided written notification to EPA of the existence of violations of the reformulated gasoline regulations, 40 C.F.R. Part 80, Subpart D ("RFG regulations"). In this disclosure, the Respondent informed the EPA that it had sold approximately 16,498 gallons of conventional gasoline at QuikTrip stores #628 and #612, which are located in "covered areas" under the RFG regulations. The Respondent requested application of EPA's Final Policy Statement entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations" 65 FR 19618, April 11, 2000 ("Audit Policy").

2. On October 15, 2001, EPA sent a Notice of Violation ("Notice") to Respondent alleging that Respondent violated the RFG regulations by selling conventional gasoline from QuikTrip stores #628 and #612, which are located in an RFG covered area. In this Notice, the EPA proposed a civil penalty of nine thousand

four hundred and four dollars (\$9,404). The Notice stated that EPA would make a determination regarding the application of the audit policy based upon information provided by Respondent during the course of settlement discussions.

3. The statutory civil penalty for each of the violations identified in the Notice is an amount up to twenty-seven thousand five hundred dollars (\$27,500) per day, plus the amount of economic benefit or savings resulting from each violation, pursuant to § 211(d) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(d).

## II. EPA's Audit Policy Determination

1. EPA issued the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties; however, EPA retains its discretion to recover any economic benefit gained as a result of non-compliance.

2. The Audit Policy sets forth the following nine conditions:

- (1) systematic discovery of the violation(s) occurred through an environmental audit or compliance management system;
- (2) the violation(s) were voluntarily discovered;
- (3) the violation(s) were promptly disclosed;
- (4) discovery and disclosure of the violations were independent of prior actions of the government or third party plaintiff;
- (5) the violations were corrected and the environmental harm was remedied;

- (6) steps were taken to prevent recurrence;
- (7) the violations were not repeat violations;
- (8) the violations did not include specific serious violations excluded under the Audit Policy; and
- (9) the violator has cooperated with EPA about the matter.

3. Where the disclosing party establishes that it satisfies all of the conditions set forth in the Audit Policy, EPA will not seek gravity-based civil penalties. Where the disclosing party establishes that it satisfies all of the conditions except for the first condition, systematic discovery, the disclosing party is eligible for a seventy five percent (75%) reduction of the gravity-based civil penalties.

4. Upon consideration of relevant information about the violation, EPA concludes that the Respondent has satisfied all the above conditions, except for systematic discovery of the violations.

5. Applying the Audit Policy, and contingent upon the truthfulness and accuracy of the information provided by the Respondent, seventy five percent (75%) of the gravity-based penalties for these violations will be eliminated by EPA. Under the terms of the Audit Policy, the Respondent's penalties based on economic benefit will not be eliminated.

6. After considering the gravity of the violations, the Respondent's history of compliance, the terms of this Agreement, other facts presented by the Respondent, and the application of the Audit Policy to this case, EPA has determined to conditionally remit and mitigate the civil penalty for these violations to two thousand eight hundred dollars (\$2,800). This reflects a seventy five percent (75%) reduction of the gravity-based component of the civil penalty plus the amount of economic benefit which was initially derived from the violations by the Respondent.

### III. Terms of Agreement

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.

1. 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.

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

3. The Respondent agrees to pay two thousand eight hundred dollars (\$2,800) within thirty days of receipt of the signed Settlement Agreement from the EPA ("penalty due date"). Late payment of this civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717.

4. The Respondent agrees to pay the two thousand eight hundred dollars (\$2,800) penalty required by paragraph III(3) of this Agreement by cashier's check or certified check, with the notation "AED/MSEB - 6054" payable to the "United States of America". The penalty is to be mailed to the following address:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 306277M  
Pittsburgh, Pennsylvania 15251  
Attention: AED/MSEB - 6054

A copy of the penalty check shall be simultaneously forwarded to Jeffrey A. Kodish at the following address:

Jeffrey A. Kodish, Attorney/Advisor  
U.S. Environmental Protection Agency  
12345 West Alameda Parkway  
Suite 214  
Denver, CO 80228

5. Time is of the essence to this Agreement. Upon the Respondent's failure to timely pay pursuant to paragraph (III)(3) of this Agreement, the parties agree that the following remedies become available to the EPA:

a. EPA may commence an action to enforce this Agreement.

b. In the event of such default or failure to comply, or of the established inaccuracy or lack of truthfulness of the information supplied by the Respondent about the violations, EPA may pursue any other legal remedies available to it. This includes proceeding in an action based on the original claim of violations 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.

c. Further, if the Respondent fails to pay the two thousand eight hundred dollars (\$2,800) penalty required by paragraph III(3) within ninety days of the penalty due date, the parties agree that the Respondent owes a stipulated penalty to the EPA of fifty-five thousand seven hundred eighteen dollars (\$55,718) ("stipulated penalty"). The stipulated penalty is an amount equal to the statutory penalty for this violation, pursuant to §§ 205 and 211 of the Clean Air Act. Once the stipulated penalty becomes due, EPA may bring an action against the Respondent to recover the stipulated penalty.

6. Consistent with the purposes of the Audit Policy, the Respondent agrees, on a continuing and company-wide basis, to institute internal policies and procedures to prevent recurrence of violations of the RFG regulations. These policies and procedures shall include, but not be limited to, implementing the

procedures identified in the Respondent's self-disclosures. The Respondent also agrees to promptly implement a policy that requires members of its store management teams in RFG covered areas to check PTDs prior to each delivery.

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

8. The parties hereby represent that the individual(s) executing this Agreement on behalf of the respective party are authorized to do so and that such execution intended and is sufficient to bind the party and, when applicable, its officers, agents, directors, owners, heirs, assigns, and successors.

9. 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 agreed to herein.

10. The terms of this Settlement Agreement and Audit Policy Determination shall be the complete settlement of all civil administrative claims and causes of action alleged or which could have been alleged under 40 C.F.R. Subpart D, for violations relating to the subject matter set forth in the February 5, 2001 Notifications from the Respondent, based upon facts known to EPA on or before the effective date of this Agreement. The Respondent's full completion of the terms of this Agreement shall terminate this matter, with, however, such termination being contingent upon the accuracy and truthfulness of the information provided about the violations by the Respondent.

11. 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 Clean Air Act, 42 U.S.C. § 7545, which are not the subject matter of this Agreement; or for other violations of law.

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 thereby.

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

The following agree to the terms of this Agreement:

**QuikTrip Corporation**

by: R. L. Catt Date: 3-14-02  
(Printed Name:) Richard L. Catt  
(Printed Title:) VP Petroleum Supply

**United States  
Environmental Protection Agency**

by: Richard Biondi /tn Date: 4/3/02  
Bruce C. Buckheit  
Director, Air Enforcement Division  
Office of Enforcement and Compliance Assurance