

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.

In the matter of:)	
)	
)	
Tosco Corporation)	File No. MSEB/AED - 6015
)	
Respondent.)	SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereinafter "EPA") and Tosco Corporation located at 4210 G Street, Philadelphia, PA 19124 (hereinafter "Respondent").

A. Preliminary Statement

1. On January 22, 2001, a Notice of Violations ("NOV") was issued by EPA to the Respondent alleging that the Respondent had violated § 211(1) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(1), and the regulations promulgated thereunder at 40 C.F.R. Part 80, Subpart G (the "detergent regulations").

2. EPA's NOV to the Respondent contained the following allegations:

a. In March of 1999, authorized representatives of the EPA inspected Respondent's terminal located at 4210 G Street in Philadelphia, PA ("Respondent's Philadelphia Terminal") to determine Respondent's compliance with the detergent regulations.

b. As a result of that inspection, EPA determined that

the Respondent failed to comply with the requirements of 40 C.F.R. §§ 80.157 or 80.170, as applicable, in violation of 40 C.F.R. §§ 80.155(b) or 80.168(b), respectively, by:

(i) Failing to attain the detergent VAR compliance standard during three (3) monthly compliance periods in 1997 (for a total of ninety (90) days of violation); and

(ii) Failing to create VAR compliance records for twenty-three (23) monthly compliance periods in the 1996-1999 time frame.

(iii) In the alternative, if VAR compliance is calculated on a daily or multi-day basis as was found at the Respondent's Philadelphia terminal, failing to attain the detergent VAR compliance standard on one hundred seventy-three (173) occasions in the July 22, 1997 - March 1, 1999 period.

3. After considering the gravity of the violations and the Respondent's history of compliance under the detergent regulations, EPA proposed in the NOV a civil penalty of fifty-one thousand two hundred dollars (\$51,200).

4. The Respondent has challenged the factual and legal sufficiency of the allegations in the NOV. Further, by entering into this agreement, Respondent neither admits nor denies any of the allegations found in the NOV.

5. 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.

B. Terms of Agreement

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. In March of 1999, authorized representatives of the EPA inspected the Respondent's Philadelphia Terminal detergent blending facility to determine Respondent's compliance with the detergent regulations.

4. At all relevant times the Respondent was the detergent blender within the meaning of 40 C.F.R. § 80.140.

5. As a result of EPA's March 1999 inspection, the EPA issued an NOV to Respondent on January 22, 2001 asserting a minimum of twenty six (26) violations of the detergent regulations at Respondent's Philadelphia Terminal from February, 1996 through February, 1999.

6. After considering the gravity of Respondent's violations alleged in the January 22, 2001 NOV, the Respondent's history of compliance, the assertions of compliance in Respondent's reply to the NOV, the terms of this Agreement, the Respondent's efforts towards correcting violations and preventing future violations, and other facts presented by the Respondent, EPA has determined to conditionally remit and mitigate the penalty proposed in the NOV to thirty thousand seven hundred twenty dollars (\$30,720).

7. As a means of resolving the allegations in EPA's January 22, 2001 NOV, Respondent agrees to pay to EPA a penalty of thirty thousand seven hundred twenty dollars (\$30,720) within sixty (60) days of receipt of the fully executed Settlement Agreement from the EPA (the "penalty due date"). Late payment of this civil

penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay this penalty to EPA by cashier's check or certified check, with the notation "AED/MSEB - 6015", 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 - 6015

A copy of the penalty check shall be simultaneously forwarded to Judith Lubow at the following address:

Judith Lubow, Staff Attorney
U.S. Environmental Protection Agency
12345 West Alameda Parkway
Suite 214
Denver, CO 80228

8. Time is of the essence to this Agreement. Upon failure to timely perform by the payment due date identified in paragraph 7 of this Agreement, the entire proposed civil penalty of fifty-one thousand two hundred dollars (\$51,200) shall immediately be due and owing. The parties agree that upon such default or failure to comply by Respondent, the 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. 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 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.

9. This Agreement becomes effective upon the date signed by the EPA, after which time a fully executed copy of the Agreement shall be returned to the Respondent.

10. 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 is intended and is sufficient to bind the party and, when applicable, its officers, agents, directors, owners, heirs, assigns, and successors.

11. Upon execution of this Agreement by EPA, 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.


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.


14. Upon completion of the terms of this Agreement, the matters in the January 22, 2001 NOV to Respondent 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 Clean Air 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:

Tosco Corporation

by:  Date: 4/18/01
(Printed Name:) Edward R. Jacoby
(Printed Title:) Vice President

**United States
Environmental Protection Agency**

by:  Date: 5/16/01
Bruce C. Buckheit
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance