

RECEIVED 6/29/98  
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U. S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D. C.

\_\_\_\_\_  
In the Matter of: )  
 )  
TOSCO REFINING COMPANY )  
 )  
Respondent. )  
\_\_\_\_\_ )

SETTLEMENT AGREEMENT  
AED/MSEB - 4821

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Tosco Refining Company, 1400 Park Avenue, Linden, New Jersey 07036 (hereafter "Respondent").

Preliminary Statement

1. On May 11, 1998, a Notice of Violation ("Notice") was issued to Respondent for 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 \$25,000 per day for each violation and the amount of the economic benefit or savings resulting from the violation.

2. After considering the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, Respondent's history of compliance with the Clean Air Act, the size of Respondent's business, Respondent's actions to remedy the violation and/or to prevent recurrence of further violation, the effect of the penalty on Respondent's ability to continue in business, and such other matters as justice may require, the EPA proposed a civil penalty of \$33,372 (hereafter "the proposed penalty").

3. 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

4. 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.

5. By entering into this Agreement, Respondent does not admit that it is in any way responsible for the alleged violation or that any violation has occurred.

6. The parties stipulate and agree to the following matters. It is further agreed that these stipulations are only 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 refiner and/or distributor as defined within the meaning of 40 C.F.R. § 80.2.

b. On May 9, 1997, EPA inspected Respondent's Tremley Point Terminal, located at Foot of South Wood Avenue, Linden, New Jersey 07036. The inspection was conducted to determine compliance with section 211(k) of the Act, 42 U.S.C. § 7545(k) and the regulations issued thereunder (40 C.F.R. Part 80, subpart D).

c. The regulations at 40 C.F.R. § 80.78(a)(1) prohibit any person from manufacturing and selling or distributing, or offering for sale or distribution, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of any gasoline represented as reformulated and intended for sale or use in any covered area, unless each gallon of such gasoline has a Rvp which is less than or equal to the applicable Rvp maximum standard specified in § 80.41.

d. As a result of the inspection, EPA has determined that Respondent's Tremley Point Terminal, which is located in the VOC-Control Region 2 reformulated gasoline covered area, was storing, supplying, or offering for sale of supply gasoline represented to be reformulated whose Rvp exceeded the 8.3 psi

maximum standard specified in 40 C.F.R. § 80.41. Moreover, EPA has determined that gasoline stored in Tank 9 and represented to be RFG for VOC-Controlled Region 2, had a Rvp of 8.72 psi.

e. Where the gasoline contained in any storage tank at any facility is found in violation, 40 C.F.R. § 80.79(a)(1) states that the refiner and/or distributor who owns, leases, operates, controls or supervises the facility where the violation is found shall be deemed in violation. Therefore, EPA has determined that Respondent is liable for a violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80:79(a)(1).

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

7. Respondent agrees to pay \$33,372 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"). In accordance with the Debt Collection Act of 1982, if the debt is not paid within 30 days following the due date, interest will accrue from the due date as the rate of eight percent (8%) per annum through the date of actual payment. A late payment handling charge of \$20.00 will also be imposed if the amount is not paid by the due date, with an additional charge of \$10.00 for each subsequent 30 day period. A six percent (6%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

Respondent agrees to pay the amount by check made payable to the "United States of America," and to mail the payments to:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
Attn.: AED/MSEB - 4821

A photocopy of the check shall be mailed simultaneously to:

J. L. Adair, Attorney/Advisor  
U.S. Environmental Protection Agency  
MSEB/AED (2242-A)  
401 M Street, S.W.  
Washington, D.C. 20460  
Attn.: AED/MSEB - 4821

8. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 7 of this Agreement, Respondent agrees to pay a stipulated penalty of \$66,744. Upon such default this amount shall be immediately due and owing. The parties further agree 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.

9. This Agreement becomes effective upon the date executed by EPA, 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 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, 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.

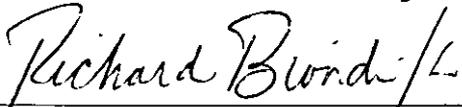
The following agree to the terms of this Agreement:

Tosco Refining Company

by: 

Date: 7/6/98

United States  
Environmental Protection Agency

by: 

Date: 8/17/98

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

ATTACHMENT 1



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

MAY 11 1998

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mr. Thomas A. Accetta  
RFG Coordinator  
Tosco Refining Company  
1400 Park Avenue  
Linden, New Jersey 07036

Re: File No. AED/MSEB - 4821  
NOTICE OF VIOLATION OF THE CLEAN AIR ACT

Dear Mr. Accetta:

On May 9, 1997, the U.S. Environmental Protection Agency ("EPA") inspected Tosco's Tremley Point Terminal, located at Foot of South Wood Avenue, Linden, New Jersey 07036. The inspection was 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.

The applicable regulations provide that no person may 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. This law also subjects violators to a maximum civil penalty of \$25,000 per day for each violation in addition to recovery of the amount of the economic benefit or savings resulting from the violation.



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As a result of the inspection, EPA has determined that the Tremley Point Terminal was storing, supplying, or offering for sale or supply gasoline in violation of 40 C.F.R. § 80.78(a)(1). Moreover, gasoline stored in Tank 9 and represented to be RFG for VOC-controlled Region 2, failed to meet the applicable 8.3 psi standard specified in 40 C.F.R. § 80.41. The gasoline stored in Tank 9 had a Rvp of 8.72 psi on May 9th. As the refiner/distributor of the gasoline, Tosco is liable for violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a)(1).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize the Administrator of EPA to assess a civil penalty of up to \$25,000 for every day of such violation and the economic benefit or savings resulting from the violation. Section 205(c) further authorizes the Administrator to compromise or remit, with or without conditions, any such penalty. After consideration of the magnitude and the gravity of the violation, the apparent size of your business, and your history of compliance with the Fuels Regulations, we propose a civil penalty for the violation alleged in this Notice of \$33,372.

The U.S. Environmental Protection Agency encourages settlement of such matters rather than initiating litigation in the federal courts. The settlement process provides substantial flexibility for reducing the statutory 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.

The EPA attorney designated below has been assigned to this case. Please contact her regarding this Notice of Violation.

Jocelyn L. Adair, Attorney  
U.S. Environmental Protection Agency  
Mobile Sources Enforcement Branch (2242-A)  
Air Enforcement Division  
401 M Street, S.W.  
Washington, D.C. 20460  
Phone number: (202) 564-1011

Please 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,

A handwritten signature in cursive script that reads "Richard Blundell". The signature is written in dark ink and is positioned above the typed name.

Bruce C. Buckheit, Director  
Air Enforcement Division