

stated that such high RVP gasoline was supplied by the Respondent into Grant Parish, Louisiana, to Bentley Hardware on twenty-eight (28) occasions in the periods between June 1 and September 15, 1995 and 1996. In addition, the NOV stated that gasoline having an RVP greater than 7.8 pounds per square inch psi was also supplied by the Respondent into Grant Parish, Louisiana, to Andy's Grocery gasoline retail outlet at 7978 Ridge Street, Pollock, Louisiana, ("Andy's Grocery") on seventy-five (75) occasions during these same volatility control periods.

b. These actions were in violation of 40 C.F.R. §80.27, the "volatility regulations". As the gasoline retailer of, and distributor and/or reseller to, these retail outlets, the Respondent was considered liable for these one hundred six (106) violations.

c. After considering the gravity of the violations and the Respondent's history of compliance under the regulations, the EPA proposed in the NOV a civil penalty of sixty thousand five hundred and twenty-eight dollars (\$60,528.00) (hereinafter "the proposed penalty").

d. 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

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. The parties stipulate and agree to the following facts. It is further agreed that these stipulations are applicable to this Agreement and any proceeding arising out of this Agreement or the subject matter of this Agreement.

a. At all relevant times the Respondent was the gasoline retailer for Bentley Hardware and Andy's Grocery gasoline retail outlets in Grant Parish, Louisiana, as well as the gasoline distributor and/or reseller to these same outlets, within the meaning of 40 CFR §§ 80.2, 80.27, and 80.28.

b. On August 20, 1996, inspectors for the EPA inspected the Bentley Hardware gasoline retail outlet. During that inspection, samples of regular, plus, and super grade gasoline were taken from the Bentley Hardware retail outlet for laboratory analysis. Analysis of the samples established that their RVP was in excess of the 7.8 psi standard specified in 40 C.F.R. § 80.27.

c. EPA review of gasoline delivery records to the Bentley Hardware retail outlet established that the Respondent had supplied gasoline having an RVP greater than 7.8 psi to this retail outlet on twenty-eight occasions during the June 1 through September 15 volatility control periods in 1995 and 1996.

d. On August 22, 1996, inspectors for the EPA inspected Andy's Grocery gasoline retail outlet. EPA review of gasoline delivery records to Andy's Grocery established that the Respondent had supplied gasoline having an RVP greater than 7.8 psi to this retail outlet on seventy-five (75) occasions in the June 1 through September 15 volatility control periods in 1995 and 1996.

e. The above constitutes one hundred six (106) violations of 40 C.F.R. § 80.27. As the gasoline retailer for, as well as the gasoline distributor and/or reseller to, these two facilities, the Respondent is liable for these violations pursuant to 40 CFR § 80.28.

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

3. After considering the gravity of the violations, the Respondent's history of compliance, the terms of this Agreement, the Respondent's efforts towards correcting the violations and preventing future violations, and other facts presented by the Respondent, EPA has determined to conditionally remit and mitigate the proposed penalty to forty-eight thousand dollars (\$48,000.00). The Respondent agrees to pay forty-eight thousand dollars (\$48,000.00) to the EPA in the following manner:

a. the first payment of twelve thousand dollars (\$12,000.00)

is to be paid within sixty (60) days of EPA's signature on this Settlement Agreement ("EPA's signature");

b. the second payment of nine thousand dollars (\$9,000.00) is to be paid within one hundred eighty (180) days of EPA's signature;

c. the third payment of nine thousand dollars (\$9,000.00) is to be paid within three hundred sixty-five (365) days of EPA's signature;

d. the fourth payment of nine thousand dollars (\$9,000.00) is to be paid within five hundred forty-five (545) days of EPA's signature;

e. the fifth and final payment of nine thousand dollars (\$9,000.00) is to be paid within seven hundred thirty (730) days of EPA's signature.

In accordance with the Debt Collection Act of 1982, if any required payment is not paid within thirty (30) days following its due date, interest will accrue from that due date at the rate of eight percent (8%) per annum, through the date of actual payment. A late payment handling charge of twenty dollars (\$20.00) will also be imposed if any required payment is not paid by its due date, with an additional charge of ten dollars (\$10.00) for each additional thirty (30) day period.

The Respondent agrees to pay the required payments by cashier's checks or certified checks with the notation

"AED/MSEB - 4721" payable to the "United States of America," and mailed to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 306277M
Pittsburgh, Pennsylvania 15251
Attention: AED/MSEB - 4721

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

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

4. Time is of the essence to this Agreement. Upon failure to timely perform by the payment due dates listed in paragraph 3 of this Agreement, the entire proposed civil penalty of sixty thousand five hundred and twenty-eight dollars (\$60,528.00) shall be due and owing, minus penalty amounts already paid. The parties agree that upon such default or failure to comply, 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.

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

6. The Respondent hereby represents that the individual or individuals executing this Agreement on behalf of the Respondent are authorized to do so and that such execution is intended and is sufficient to bind the Respondent, its officers, agents, directors, owners, heirs, assigns, and successors.

7. 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 consented to herein.

8. 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.

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

10. Upon completion of the terms of this Agreement, this matter 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:

W.B. McCartney Oil Company, Inc.

by: *Samuel W. McCartney*
Typed name:
Title:

Date: *7/8/98*

**United States
Environmental Protection Agency**

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

Date: *1/16/98*