

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

In the Matter of:)	SETTLEMENT AGREEMENT AED/MSEB - 6030
Western Petroleum Company)	
Respondent.)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Western Petroleum Company, 9531 West 78th Street, Eden Prairie, Minnesota 55344 (hereafter "Respondent" or "Western").

Preliminary Statement

1. On June 14, 2001, 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 anti-dumping regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). See Attachment 1. The EPA fuels regulations require reformulated and conventional gasoline to meet certain emission standards and impose on refiners and importers a number of quality assurance, recordkeeping, and reporting requirements. Violators of this law are subject to a maximum civil penalty of \$27,500 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 alleged violations, Respondent's history of compliance with the regulations, and the size of Respondent's business, EPA proposed a civil penalty of \$55,000 (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 violations or that any violations have occurred.

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 an importer as defined within the meaning of 40 C.F.R. § 80.2.
- b. On November 17-20, 1997, EPA audited Respondent to determine compliance with § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the reformulated gasoline and anti-dumping fuels regulations issued thereunder at 40 C.F.R. Part 80.
- c. As a result of EPA's audit of Western, EPA alleged that Western:
 - (1) Failed to comply with the limited exception to the every batch testing requirements of 40 C.F.R. § 80.101(i).
 - (2) Failed to ensure that the auditors sampling procedure for attestations resulted in a random selection as required by 40 C.F.R. § 80.128.
 - (3) Failed to obtain laboratory analyses for each selected batch to ensure that the analyses agree with the EPA batch reports as required by 40 C.F.R. § 80.128. Rather the auditor used a table of quarterly averaged analyses in preparing the batch reports;
 - (4) Failed to file an accurate annual report by not using default penalty values for missing test parameter values.

7. Jurisdiction to settle this matter exists pursuant to § 211 of the Clean Air Act, 42 U.S.C. § 7545, 40 C.F.R. § 80.20, and other provisions of law.

8. After considering the gravity of the alleged violations, Respondent's history of compliance with the regulations, the economic benefit or savings resulting from the violations, Respondent's size of business, and actions taken to remedy the violations, EPA has determined to mitigate the civil penalty to \$22,500 subject to successful completion of the terms of this Agreement.

9. Respondent agrees to pay \$22,500 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"). Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717.

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 - 6030

A photocopy of the check shall be mailed simultaneously to:

J. L. Adair, Attorney/Advisor
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
Air Enforcement Division (2242-A)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Attn.: AED/MSEB - 6030

10. Respondent also agrees to conduct a self-audit to ensure that it is in full compliance with the anti-dumping fuels requirements, 40 C.F.R. Subpart E; and, to disclose to EPA within eighty (80) days of the agreement any violations discovered as a result of the self-audit. Respondent further agrees to take certain steps to prevent future violations. Such steps shall include:

- a. Ensuring that the truck importer's sampling and testing requirements prescribed at 40 C.F.R. § 80.101(i) are being met. For example, determining whether or not an independent laboratory is sampling and testing the Canadian refinery's gasoline subsequent to each receipt of gasoline into the storage tank supplying the importer's truck, or immediately prior to each transfer of gasoline into the importer's truck.
- b. Ensuring that the sampling and testing methods prescribed at 40 C.F.R. Part 80, Appendix D, and 40 C.F.R. § 80.46 are being used. (Note: In the near future, sampling methods may be prescribed at 40 C.F.R. § 80.8)
- c. Ensuring that the gasoline at the truck loading terminal is being tested for each applicable parameter specified under 40 C.F.R. § 80.65(e)(2)(i).
- d. Ensuring that the truck importer is provided the information and monitors the sampling and testing methods, test results, the date of sampling and testing, and the volume of gasoline sampled.
- e. Ensuring that the annual average emissions standards will be met by calculating the conventional gasoline baseline emissions on an ongoing basis, (e.g., monthly).

11. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraphs 9 and 10 of this Agreement, Respondent agrees to pay a stipulated penalty of \$55,000. This stipulated penalty is in addition to the proposed penalty. 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.

a. EPA agrees to provide a written notice to Respondent before finding Respondent in default of this Agreement. EPA agrees to send the notice by certified mail, return receipt requested. Respondent shall have five (5) business days to receive the notice in the mail. Thereafter, Respondent shall have ten (10) business days to make all payments or cure the default. The notice shall be sent to Respondent's attorney at its last known business address.

12. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.

13. 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.

14. 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.

15. 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.

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

17. 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:

Western Petroleum Company

by: 
Bill Fulle
President

Date: 02/18/02

United States
Environmental Protection Agency

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

Date: 3/8/02



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

June 14, 2001

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Rick Nevill, Senior Vice President
Western Petroleum Company
9531 West 78th Street
Eden Prairie, Minnesota 55344

Re: File No. AED/MSEB - 6030
NOTICE OF VIOLATION OF THE CLEAN AIR ACT

Dear Mr. Nevill:

During November 17 - 20, 1997, the U.S. Environmental Protection Agency ("EPA") audited Western Oil Company ("Western"), located at 9531 West 78th Street, Eden Prairie, Minnesota, for compliance with the Clean Air Act ("Act"), 42 U.S.C. § 7545(k), and the anti-dumping fuels regulations issued thereunder 40 C.F.R. Part 80, Subpart E.

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 EPA fuels regulations require conventional gasoline to meet certain emission standards and impose on importers a number of quality assurance, recordkeeping, and reporting requirements. As a result of EPA's audit of Western, EPA determined that in 1996 and 1997 Western failed to comply with the fuels regulations as follows:

- (1) Failed to comply with the limited exception to the every batch testing requirements of §80.101(i), by
 - (a) Importing conventional gasoline that failed to meet the anti-dumping standards, specified at § 80.101(b), on an every-gallon basis,
See Enclosure.
 - (b) Failing to separate winter gasoline from summer gasoline;

- (c) Failing to ensure that the gasoline at the truck loading terminal was tested for each applicable parameter specified under § 80.65(e)(2)(i), using the test methods specified under § 80.46;
 - (d) Failing to obtain a copy of the terminal's test results for each truck load of gasoline that it imported into the United States;
 - (e) Failing to conduct a program of periodic quality assurance sampling and testing of the gasoline obtained from each truck-loading terminal to ensure the accuracy of the truck-loading terminal's test results;
 - (f) Failing to include quality assurance testing in the annual attest engagement, and attest engagement report, required under § 80.105(c) and §§ 80.125 through 80.130; and,
 - (g) Failing to provide EPA inspectors and auditors full and immediate access to the truck-loading terminal and laboratory facilities as required by the alternative batch testing method
- (2) Failed to ensure that the auditors sampling procedure for attestations resulted in a random selection as required by 40 C.F.R. § 80.128.
 - (3) Failed to obtain laboratory analyses for each selected batch to ensure that the analyses agree with the EPA batch reports as required by 40 C.F.R. § 80.128. Rather the auditor used a table of quarterly averaged analyses in preparing the batch reports;
 - (4) Failed to file an accurate annual report by not using default penalty values for missing test parameter values.

In addition, on January 31, 1997, Western disclosed the following violations to EPA:

- (5) During November 13th through December 10, 1996 at Winnipeg and November 15th through December 10, 1996 at Regina, Western purchased from Imperial and imported into the United States 2,352,000 gallons of conventional gasoline that contained an additive (PD 743IVD) that did not meet the requirements of 40 CFR Part 80, Subpart G, in violation of 40 CFR §§ 80.141(a) and 80.156.
- (6) During 1995, Western imported 8,346 bbls. from the Regina terminal that had a weight-average olefin content of 15.3 vol. %, which exceeded the maximum standard of 13.5 vol. % (10.8 vol.% plus 25%).
- (7) During 1995, Western imported 44,674 bbls, from the Corunna terminal that had an average olefin content of 16.1 vol. %, and a sulfur content of 590 ppm, which

exceeded the maximum standard of 13.5 vol.% and 442 ppm (338 ppm plus 25%) Western noted that according to the foreign terminal test results its imported gasoline met the annual average statutory baseline.

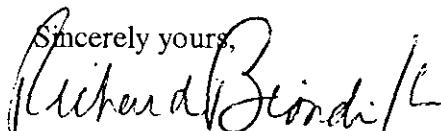
Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize EPA to assess a civil penalty of up to \$27,500 per day for each such violation plus the economic benefit or savings resulting from the violation. In determining the appropriate penalty for violations such as this, we consider the gravity of the violations, the economic benefit or savings (if any) resulting from the violations, the size of your business, your history of compliance with the Act, actions taken by you to remedy the violations and prevent future violations, the effect of the penalty on your ability to continue in business and other matters as justice may require. Based on these factors, we propose a civil penalty of \$55,000 for the violations alleged in this Notice that were committed on or after June 1996.

We encourage early settlement of matters such as this. The settlement process provides substantial flexibility for reducing the proposed 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.

Please contact the EPA attorney designated below regarding this Notice:

Jocelyn L. Adair, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch (2242-A)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Phone number: (202) 564-1011

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,

Bruce C. Buckheit, Director
Air Enforcement Division

Enclosure

Shell Corunna

Date	Batch No.	Vol. (gals.)	Sulfur	Olefins	Exhaust Bz
6/1/96	69600	171,246	730	15.30	
7/1/96	79600	320,469	530		7.55
8/1/96	89600	512,051	480	14.20	
9/1/96	99600	438,900	480	14.20	
10/1/96	109600	274,367	450		
11/1/96	119600	1,005,424	470	16.8	
12/1/96	129600	434,467	650		
Total		3,156,924			
<u>Shell</u>	<u>Calgary</u>				
Date	Batch No.	Vol. (gals.)	Sulfur	Olefins	Exhaust Bz
7/22-30/96	79600	217,081			6.71
8/1/96	89600	494,513			6.71
9/1/96	99600	330,229			6.71
10/1/96	109600	222,597			6.71
11/1/96	119600	224,4495			6.71
12/1/96	129600	207,567			6.71
Total		1,696,482			
<u>Consumers</u>	<u>Coop</u>				
6/1/96	69600	26,183		15.10	6.60
9/1/96	99600	11,522		19.70	7.35
11/1/96	119600	67,999		16.90	
12/1/96	129600	12,362		18.00	
Total		118,066			