

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

_____)	
In the Matter of:)	
)	SETTLEMENT AGREEMENT
Robert Wirkus, Owner)	AED/MSEB - 4876
Wirkus Automotive Ltd.)	
)	
Respondent.)	
_____)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Robert Wirkus, Owner of Wirkus Automotive Ltd., 621 Commack Road, Commack, New York 11725 (hereafter "Respondent").

Preliminary Statement

1. On May 27, 1999, 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 \$27,500 per day for each violation and the amount of the economic benefit or savings resulting from the violation.

2. 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

3. 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.

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

5. 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 a retailer as defined within the meaning of 40 C.F.R. § 80.2.

b. On June 22, 1998, EPA inspected Respondent's retail outlet located at 621 Commack Road, Commack, New York 11725. Respondent's retail outlet is located in the VOC Control Region 2 reformulated gasoline covered area where the minimum VOC emissions performance reduction standard is 13.1 percent.

c. As a result of the inspection, EPA determined that the retail outlet was selling premium gasoline that had a VOC emissions performance increase of 24.25 percent.

d. Where the gasoline contained in any storage tank at any retail outlet is found in violation, the retailer shall be deemed in violation. Therefore, Respondent is liable for violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a).

e. 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.

6. After considering the gravity of the alleged violation, Respondent's history of compliance with the regulations, EPA has determined to remit and mitigate the civil penalty to \$1,800 subject to successful completion of the terms of this Agreement.

Respondent agrees to pay \$1,800 to the United States of America in four (4) consecutive quarterly payments of \$450 each. The first payment shall be due 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 certified check made payable to the "United States of America," and to mail the payment to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn.: AED/MSEB - 4876

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)
401 M Street, S.W.
Washington, D.C. 20460
Attn.: AED/MSEB - 4876

7. 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 \$3,600. This stipulated penalty is in addition to the proposed penalty. Upon such default this amount shall be immediately due and owing. Respondent further agrees 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.

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

9. Respondent hereby represents that the individual or individuals executing the Agreement on behalf of Respondent is authorized to do so and that such execution is intended and is sufficient to bind Respondent.

10. 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.

11. 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.

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

13. 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:

Robert Wirkus, Owner
Wirkus Automotive Ltd.:

by: Robert Wirkus

Date: October 14 1999

United States
Environmental Protection Agency

by: Richard Bimhoff

Date: 11/9/99

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 27 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Robert Wirkus, President of
Wirkus Automotive Ltd.
621 Commack Road
Commack, New York 11725

Re: File No. AED/MSEB - 4876

NOTICE OF VIOLATION OF THE CLEAN AIR ACT

Dear Mr. Wirkus:

On June 22, 1998, the U.S. Environmental Protection Agency ("EPA") inspected your retail outlet, located at 621 Commack Road, Commack, New York 11725. 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.

EPA regulations require that gasoline sold or used in RFG covered areas must meet the standards specified for RFG. However, EPA has determined that gasoline sold or used at Wirkus Automotive, which is located in an RFG covered area, failed to meet the RFG standard for VOC emissions performance reduction specified in 40 CFR § 80.41. In particular, the premium gasoline had a VOC emissions performance increase of 24.25 percent on June 22, 1998, which violates the minimum VOC emissions performance reduction of 13.1 percent. As the retailer who owns, leases, operates, controls or supervises the retail outlet where the violation was found, you are liable for violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a).

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 a violation such as this we consider the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of your business, your history of compliance with the Act, actions taken by you to remedy the violation and prevent future violation, 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 \$1,800 for the violation alleged in this Notice.

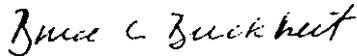
We encourage early settlement of matters such as this. The settlement process provides substantially flexibility for reducing the proposed penalty, particularly if the alleged violation is corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint 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)
401 M Street, S.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

SUBJECT: Recommendation to Execute RFG Settlement Agreement for Robert Wirkus, Owner of Wirkus Automotive Ltd.; AED/MSEB-4876

FROM: J. L. Adair, Esquire
TO: Bruce Buckheit, Director
Air Enforcement Division



DATE: October 20, 1999

RESPONDENT	CASE	DATE OF NOV
Robert Wirkus, Owner Wirkus Automotive Ltd. 621 Commack Road Commack, New York 11725	AED/MSEB: 4876	05/27/99

VOC-Emission Performance Reduction Standard: 13.1 %
Test Results: Increase of 24.25 %

Summary of Facts:

On June 22, 1998, Respondent's retail outlet was inspected and found selling premium gasoline that had a VOC emission performance increase of 24.25 percent. We alleged a violation of the RFG VOC-EPR standards, 40 C.F.R. § 80.78(a)(1). We determined that the violations were caused by low turnover.

PENALTY JUSTIFICATION:

The Lotus Worksheet proposes a penalty of \$1,800. The penalty was based on the following considerations:

Prior Violations:	None
Business Size:	Catg. 1, Under \$2 M
Gravity of Violation:	Increase over the VOC-EPR standard 24.25%
Volume of Gasoline Not In Compliance:	Minimum of 10,000 gallons.

Terms of Agreement:

Respondent agrees to pay \$1,800 in 4 consecutive payments of \$450 each.

Last Payment Due: Within 9 months of agreement

ADDITIONAL SETTLEMENT TERMS: None.

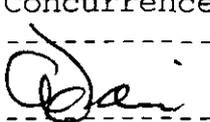
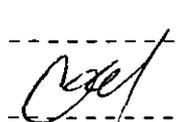
CORRECTIVE ACTION TAKEN TO WARRANT REDUCTION: N/A

STATUS OF RELATED CASES: None.

Recommendation:

We recommend that you sign the attached Agreement for Robert Wirkus, Owner of Wirkus Automotive Ltd.; AED/MSEB-4876.

Concurrences:

			
22420	10/26/99	11/9/99	
10/20/99			