

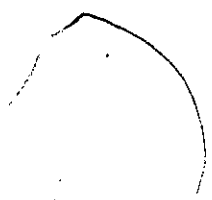
UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C.

In the matter of:	)	
Wyatt Energy, Incorporated	)	File No. MSEB/AED -- 5087
Respondent.	)	SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Wyatt Energy, Incorporated (Respondent).

A. Preliminary Statement.

1. On August 10, 1999, a Notice of Violation (NOV) was issued to Respondent alleging that Respondent had violated § 211 of the Clean Air Act (the Act), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80, subpart D. The NOV stated that on numerous occasions between May and September, 1999 gasoline was sold and offered for sale in violation of 40 C.F.R. § 80.41, and 40 C.F.R. § 80.78(a)(1). The Notice also stated that the Respondent, as the carrier who dispensed, supplied, stored or transported the gasoline, was liable for these violations pursuant to 40 C.F.R. § 80.79(a). The NOV further stated that the statutory civil penalty is



Twenty-Seven Thousand Five Hundred Dollars (\$27,500) per day for each such violation plus the economic benefit or savings resulting from the violations pursuant to § 211(d) of the Act, 42 U.S.C. § 7545(d).

2. The EPA and the Respondent desire to settle this matter according to the mutual covenants and agreements contained herein. The consideration is acknowledged to be adequate, and the EPA and the Respondent agree as set forth herein.

**B. Terms of Agreement**

3. The EPA and the Respondent 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.

4. As contained in EPA's NOV to the Respondent and other information, the EPA alleges the following:

a. At all relevant times, the Respondent was a carrier and/or distributor within the meanings of 40 C.F.R. § 80.2(t) and/or a person within the meaning of section 302(e) of the Clean Air Act 42 U.S.C. § 7602(e).

b. On May 13, 1999, representatives of EPA conducted an inspection at the Respondent's New Haven terminal, located at 280 Waterfront Street, New Haven Connecticut, which is in an RFG covered area. EPA laboratory analysis showed the premium grade gasoline being sold and offered for sale as RFG from Tank #210 failed to meet the minimum RFG standard of 13.1 % for VOC

emissions performance reduction specified in 40 C.F.R. § 80.41, in that it had a VOC emissions performance reduction of -1.4 %. EPA has determined that this constitutes a violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a) and that Respondent, as the carrier who dispensed, supplied, stored or transported the gasoline, is liable for this violation.

c. On August 18, 1999, laboratory analysis of gasoline samples taken by ITS Caleb Brett and reported to Wyatt showed the premium grade gasoline being sold and offered for sale as RFG from Tank #209, New Haven Terminal, failed to meet the minimum RFG standard of 13.1 % for VOC emissions performance reduction specified in 40 C.F.R. § 80.41, in that it had a VOC emissions performance reduction of 9.6 %. EPA has determined that this constitutes a violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a) and that Respondent, as the carrier who dispensed, supplied, stored or transported the gasoline, is liable for this violation.

d. On July 13, 1999, an RFG survey inspection was conducted at Wethersfield Exxon retail gasoline facility, located in Wethersfield, Connecticut, which is in an RFG covered area. EPA laboratory analysis showed the premium grade gasoline being sold and offered for sale as RFG on July 13, 1999 failed to meet the minimum RFG standard of 13.1 % for VOC emissions performance reduction specified in 40 C.F.R. § 80.41, in that it

had a VOC emissions performance reduction of 7.2 %. EPA has determined that this constitutes a violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a) and that Respondent, as the carrier who dispensed, supplied or transported the gasoline, is liable for this violation.

e. On August 10, 1999, an RFG survey inspection was conducted at Hudlow Exxon retail gasoline facility, located in Manchester, Connecticut, which is in an RFG covered area. EPA laboratory analysis showed the premium grade gasoline being sold and offered for sale as RFG on August 10, 1998 failed to meet the minimum RFG standard of 13.1 % for VOC emissions performance reduction specified in 40 C.F.R. § 80.41, in that it had a VOC emissions performance reduction of 10.5 %. EPA has determined that this constitutes a violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a) and that Respondent, as the carrier who dispensed, supplied, or transported the gasoline, is liable for this violation.

g. On August 12, 1999, an RFG survey inspection was conducted at Farmington Exxon retail gasoline facility, located in West Hartford, Connecticut, which is in an RFG covered area. EPA laboratory analysis showed the premium grade gasoline being sold and offered for sale as RFG on August 12, 1999 failed to meet the minimum RFG standard of 13.1 % for VOC emissions

performance reduction specified in 40 C.F.R. § 80.41, in that it had a VOC emissions performance reduction of 10.5 %. EPA has determined that this constitutes a violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a) and that Respondent, as the carrier who dispensed, supplied, stored or transported the gasoline, is liable for this violation.

h. On August 26, 1999, an RFG survey inspection was conducted at DB Dairy Mart #737 Citgo retail gasoline facility, located in Windsor Locks, Connecticut, which is in an RFG covered area. EPA laboratory analysis showed the premium grade gasoline being sold and offered for sale as RFG on August 26, 1998 failed to meet the minimum RFG standard of 13.1 % for VOC emissions performance reduction specified in 40 C.F.R. § 80.41, in that it had a VOC emissions performance reduction of 8.4 %. EPA has determined that this constitutes a violation of 40 C.F.R.

§ 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a) and that Respondent, as the carrier who dispensed, supplied, stored or transported the gasoline, is liable for this violation.

i. EPA has further determined that from at least May 1, 1999 through September 15, 1999, Respondent's vapor recovery unit was being routed to either Tank #209 or #210, its premium

grade gasoline tanks, which caused the gasoline to fail to meet the applicable VOC emission reduction standard.

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

5. After considering the gravity of the violations alleged in the August 10, 1999 NOV, the economic benefit or savings (if any) resulting from the violations, the size of Respondent's business, Respondent's history of compliance with the fuels regulations, other facts presented by Respondent and Respondent's actions to remedy the violation, EPA has determined to mitigate the potential civil penalty of not less than Eighty-Eight Thousand Dollars (\$88,000) to Thirty Thousand Dollars (\$30,000), pending successful completion of the terms of this Agreement. As a means of resolving the allegations contained in the August 10, 1999 NOV, Respondent agrees to pay Thirty Thousand Dollars (\$30,000) within thirty days of receipt of a signed settlement agreement from EPA.

In accordance with section 3717 of the Debt Collection Act of 1982, 31 U.S.C. § 3717, if the debt is not paid within thirty days following the due date, interest will accrue from the due date through the date of actual payment. Interest will be computed in accordance with section 3717(a) of the Debt Collection Act. A late payment handling charge of \$20.00 will

also be imposed if the amount due is not paid by the due date, with an additional charge of \$10.00 for each thirty-day period. The Respondent agrees to pay the amount due by cashier's check or certified check payable to the "United States of America" and mailed to:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
ATTN: AED/MSEB - 5087

A copy of the check shall be forwarded simultaneously to:

Angela E. Fitzgerald (2242A)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

6. Timely performance is essential to this Agreement. Upon failure to timely perform pursuant to paragraph 4 of this Agreement, or upon default of or failure to comply with any terms of this Agreement by the Respondent, the parties agree that upon such default or failure to comply,

a. The full amount of Eighty Eight Thousand Dollars (\$88,000), less any amount that has been paid, becomes due and owing, and

b. 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. 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 Act, 42 U.S.C. § 7522, 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 the passage of time.

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

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

9. 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.

10. The terms of this Agreement are contractual and are not mere recitals. 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.

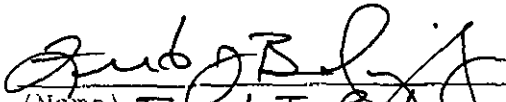
11. The validity, enforceability and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.




12. 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 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:

Wyatt Energy, Incorporated

By:  Date: 4/1/02  
(Name) Fred J. Boggs, Jr.  
(Title) Executive Vice President

United States  
Environmental Protection Agency

By:  Date: 3/13/02  
Bruce C. Buckheit, Director  
Air Enforcement Division.