

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.

In the Matter of:)

Amerada Hess Corporation)

Respondent.)

SETTLEMENT AGREEMENT
AND AUDIT POLICY DETERMINATION

EPA File No. MSEB/AED - #7105

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Amerada Hess Corporation ("Hess"), located at One Hess Plaza, Woodbridge, New Jersey 07096 ("Hess").

A. Preliminary Statement

1. By letters dated October 20 and December 23, 2004 and May 1, 2005, and electronic transmission dated June 6, 2005, Hess disclosed to Judy Lubow of the EPA the existence of violations of the gasoline detergent additization regulations, 40 C.F.R. Part 80, Subpart G ("detergent regulations"), at the Hess gasoline terminal located at 5150 Virginia Avenue, North Charleston, South Carolina 29405 ("Charleston Terminal").

2. Hess disclosed that, as the detergent blender at the Charleston Terminal, Hess failed to additize:

(a) thirty-one truckloads of gasoline, amounting to 167,000 gallons, that were transferred out of the Charleston Terminal between September 2 and 23, 2004, as described in Hess' October 20, 2004 letter to EPA ("Incident One violations"); and

(b) four hundred forty truckloads of premium grade gasoline, amounting to 551,971 gallons, that were transferred out of the Charleston Terminal between September 2 and November 30, 2004, as described in Hess' December 23, 2004 and May 1, 2005 letters to EPA ("Incident Two violations"),

3. Hess also disclosed that, as a means of preventing a recurrence of such violations, it

has instituted the following company-wide quality control procedures:

- a. a computer change that will prevent gasoline loading if there is no physical additive injector associated with the loading; and
- b. an additional computer change that will prevent the activation of a customer shipping code on a specific gasoline loading bay if there is no additive injector existing in that bay for that additive and shipper.

4. The detergent regulations, at 40 C.F.R. § 80.168(b), provide that no person may blend detergent additive into gasoline unless blended in conformity with the volumetric additive reconciliation ("VAR") requirements of 40 C.F.R. § 80.170.

5. The Clean Air Act, at 42 U.S.C. § 7524, and the detergent regulations at 40 C.F.R. § 80.172, subject violators of these laws to a maximum civil penalty of \$27,500 per day for each violation occurring between January 30 1997 and March 15, 2004, and \$32,500 per day for each violation occurring thereafter, plus the amount of economic benefit or savings resulting from each violation.

6. Hess requested application to its disclosed violations of EPA's "Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations" (65 Fed. Reg. 19618 (2000)) ("Audit Policy").

B. EPA's Audit Policy Determination and Administrative Action

1. EPA issued the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties. EPA retains its discretion to recover any economic benefit gained as a result of non-compliance.

2. Where the disclosing party establishes that it satisfies all of the conditions set forth in the Audit Policy, EPA will not seek gravity-based penalties for violations of federal environmental requirements. Where the disclosing party establishes that it satisfies all of the Audit Policy conditions with the exception of establishing that the violations were found through a formal audit or due diligence, EPA will reduce the gravity-based penalty for the violations by

75%.

3. Incident One Violations. Upon consideration of the disclosures about the Incident One violations made by Hess, EPA concludes that Hess meets the requirements of the Audit Policy for 100% elimination of gravity-based penalties for these violations. Since according to Hess' representations, Hess gained no economic benefit as a result of the Incident One violations, no penalty for these violations based upon economic benefit is being imposed.

4. Incident Two Violations. Upon consideration of the disclosures about the Incident Two violations made by Hess, EPA concludes that Hess meets the requirements of the Audit Policy with the exception of establishing that the Incident Two violations were found through a formal audit or due diligence. Application of the Audit Policy under such circumstances results in the elimination of 75% of the gravity-based component of the penalty for these violations.

5. After considering the gravity of the Incident Two violations, Hess' history of compliance, the terms of this Agreement, other facts presented by Hess, the application of the Audit Policy to these violations, and contingent upon the truthfulness and accuracy of the Audit Policy information provided by Hess, EPA has determined to conditionally remit and mitigate the civil penalty for the Incident Two violations to \$36,000. This penalty reflects both the reduced gravity component under the Audit Policy and the economic benefit component that EPA estimates Hess derived from these violations.

C. Terms of Agreement

The parties, desiring to settle and resolve the disclosed detergent regulation violations, 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.

1. 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 disclosed violations.

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

3. At all relevant times when the violations occurred, Hess was the detergent blender at

the Charleston Terminal within the meaning of 40 C.F.R. § 80.140.

4. At the Charleston Terminal, Hess failed to additize approximately 167,000 gallons of gasoline that were transferred out of the Charleston Terminal in 31 truck loads between September 2 and 23, 2004 in violation of 40 C.F.R. § 80.168(b).

5. At the Charleston Terminal, Hess failed to additize approximately 551,971 gallons of premium grade gasoline that were transferred out of the Charleston Terminal in 440 truck loads between September 2 and November 30, 2004 in violation of 40 C.F.R. § 80.168(b).

6. As the detergent blender, Hess is responsible for the 471 violations of 40 C.F.R. § 80.168(b) identified in paragraphs C-4 & 5 of this Agreement, pursuant to 40 C.F.R. § 80.169(a)(4)(i).

7. After considering the gravity of the violations, Hess' history of compliance, the terms of this Agreement, other facts presented by Hess, the application of the Audit Policy to this case, and contingent upon the truthfulness and accuracy of the Audit Policy information provided by Hess, EPA has determined to remit and mitigate the civil penalty for the violations disclosed by Hess to \$36,000.

8. As a means of resolving the disclosed detergent program violations at the Charleston Terminal, Hess agrees to pay to EPA a civil penalty of \$36,000 within sixty days of receipt of the fully executed Agreement from the EPA (the "penalty due date"). Late payment of this civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Hess agrees to pay this penalty to EPA by cashier's check or certified check, with the notation "AED/MSEB - 7105", payable to the "United States of America". The penalty is to be mailed to the following address:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attention: AED/MSEB - 7105

A copy of the penalty check shall be simultaneously forwarded to Judy Lubow at the following address:

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

9. Time is of the essence to this Agreement. Upon Hess' failure to timely pay the civil penalty by the penalty due date listed in paragraph C-8 of this Agreement, the civil penalty of \$36,000 shall immediately become due and owing by Hess. Upon such failure to timely perform, EPA may commence an action to enforce this Agreement, or to recover civil penalties for the disclosed violations pursuant to Section 205 of the Clean Air Act, 42 U.S.C. § 7524, or pursue any other remedies available to it. Hess specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on a claim of violations of Section 211 of the Act, 42 U.S.C. § 7545, and Hess 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.

10. This Agreement becomes effective upon the date signed by the EPA, after which time a copy will be forwarded to Hess.

11. The parties hereby represent that the individual executing this Agreement on behalf of the respective party is authorized to do so and that such execution is intended and is sufficient to bind the party and, when applicable, its officers, agents, directors, owners, heirs, assigns, and successors.

12. The effect of the settlement described in the Paragraph C-14 of this Agreement is conditional upon the accuracy of the Respondent's representations to EPA as memorialized in paragraphs A-1 through 3, and B-3, of this Agreement.

13. Hess 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.

14. The terms of this Agreement shall be the complete settlement of all civil administrative claims and causes of action under the detergent regulations for the violations disclosed by Hess to EPA by letters dated October 20 and December 23, 2004 and May 1, 2005, and electronic transmission dated June 6, 2005. Hess's full completion of the terms of this

Agreement shall terminate this matter, with, however, such termination being contingent upon the accuracy and truthfulness of the information provided about the violations by Hess.


15. Nothing herein shall limit the right of EPA to proceed against Hess in the event of default or noncompliance with this Agreement; for violations of Section 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.

16. 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.

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

The following agree to the terms of this Agreement:

Amerada Hess Corporation

by: 



Date: 8/11/05

Typed Name H. I. Small
Typed Title Vice President
Terminal Operations & Refining