

U.S. ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C.

In the Matter of:)	AED/MSEB No. 4594
ASTRO REDI-MIX CONCRETE, INC.,)	SETTLEMENT AGREEMENT
a Texas Corporation,)	
)	
Respondent.)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereinafter "EPA") and Astro Redi-Mix Concrete, Inc., a Texas Corporation, (hereinafter referred to as "Respondent").

Preliminary Statement

1. On March 20, 1996, a Notice of Violations, AED/MSEB No. 4594, was issued to Respondent stating that at Respondent's facility located at Route 4, Pearland, Texas, there were violations of section 211(g) of the Clean Air Act ("the CAA"), 42 U.S.C. § 7545(k) and the regulations issued thereunder at 40 C.F.R. Part 80.
2. Respondent denies the allegations of the Notice of Violations.
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 is the most appropriate means of resolving the matter.
5. The parties stipulate and agree to the following matters. It is further agreed that these stipulations are applicable to this Settlement Agreement and any proceeding arising out of

this Settlement Agreement or the subject matter of this Settlement Agreement.

a. Respondent is a person as defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e).

b. Respondent is a "wholesale purchaser-consumer" as defined in 40 C.F.R. § 80.2(o).

c. The Notice of Violations alleges that on the three occasions set forth below, in violation of section 211(g)(2) of the CAA, 42 U.S.C. § 7545(g)(2), Respondent introduced or caused or allowed the introduction into a motor vehicle of diesel fuel which Respondent knew or should have known contained a concentration of sulfur in excess of 0.05 percent (by weight):

1) On or about January 31, 1995, Respondent introduced or caused or allowed the introduction into a 1993 "P/B" Truck, Texas License 2AA258, of such diesel fuel.

2) On or about January 31, 1995, Respondent introduced or caused or allowed the introduction into a 1992 GMC Truck, Texas License 2AA253, of such diesel fuel.

3) On or about January 31, 1995, Respondent introduced or caused or allowed the introduction into a 1984 International, Texas License HT3974, of such diesel fuel.

d. As a person who introduced or caused or allowed the introduction of such diesel fuel, Respondent is liable for the violations set forth in subparagraph c above, pursuant to section 211(g)(2) of the CAA, 42 U.S.C. § 7545(g)(2).

e. The Notice of Violations alleges that on or about January 31, 1995, Respondent, in violation of 40 C.F.R. § 80.29(a), was, from its low sulfur diesel tank, manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting diesel fuel for use in motor vehicles with a sulfur content greater than 0.05% by weight.

f. As a wholesale purchaser-consumer which manufactured, introduced into commerce, sold, offered for sale, supplied, dispensed, offered for supply, or transported the diesel fuel that was in violation, Respondent is liable for the violation set forth in subparagraph e above pursuant to 40 C.F.R. § 80.30(f).

g. Jurisdiction to settle this matter exists pursuant to section 211 of the CAA, 42 U.S.C. § 7545 and other provisions of law.

6. After considering the gravity of the violation, the economic benefit or savings resulting from the violation, the size of Respondent's business, the Respondent's history of compliance, actions taken by Respondent to remedy the violations, the effect of the penalty on Respondent's ability to continue in business, the terms of this Settlement Agreement and other facts presented by Respondent, EPA has agreed to conditionally remit and mitigate the civil penalty to Three Thousand Six Hundred Dollars (\$3,600), pending successful completion of the terms of this Settlement Agreement. Respondent agrees to pay Three Thousand Six Hundred Dollars (\$3,600) as follows: Respondent shall pay the penalty amount on or before the date which is sixty days after the effective date of this Settlement Agreement (the effective date is the date EPA signs the Settlement Agreement). In accordance with the Debt Collection Act of 1982, if the civil penalty amount is not paid within 30 days following the due date, interest will accrue from the due date at a rate to be furnished each quarter by the EPA Fiscal Policies and Procedures Branch, 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 6% per annum penalty will be applied on any principal amount not paid within 90 days of the due date. The Respondent agrees that the civil penalty amount will be paid by cashier's check or certified check payable to the "United States of America" submitted to the EPA Washington Accounting Operations, P.O. Box 360277M, Pittsburgh, Pennsylvania 15251, Attn: AED/MSEB No. 4594 with a copy to Marcia S. Ginley, Attorney for EPA. Each such check shall be identified with the case number 4594 and Respondent's name.

7. Respondent expressly agrees that the amounts paid under the terms of this Settlement Agreement are not deductible with respect to any federal, state, local or other tax.

8. Time is of the essence to this Settlement Agreement. Upon failure to timely pay or perform pursuant to Paragraph 6 of this Settlement Agreement, or upon default of or failure to comply with any of the terms of this Settlement Agreement by the Respondent, a civil penalty of Six Thousand Dollars (\$6,000), shall be immediately due and payable, and the interest charges and other penalties specified in Paragraph 6 shall be applied to this amount effective from the due date and will continue until the debt is paid in full. The parties agree that upon such default or failure to comply, EPA may refer this matter to the United States Attorney General for collection;

commence an action to enforce this Settlement Agreement or to recover the civil penalty pursuant to section 211 of the CAA, 42 U.S.C. § 7545; 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 claims of violation of section 211 of the CAA, 42 U.S.C. § 7545 and the regulations at 40 C.F.R. Part 80, 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.

9. The provisions of this Settlement Agreement shall apply to and be binding upon Respondent, its agents, employees, servants, successors, and assigns.

10. Respondent hereby represents that the individual executing this Settlement Agreement is authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, employees, servants, assigns, and successors.

11. The terms of this Settlement Agreement are contractual and not a mere recital. If any provision or provisions of this Settlement 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 and all other matters pertaining to this Settlement Agreement shall be determined in accordance with applicable federal law.

13. Upon completion of the terms of this Settlement Agreement, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of the EPA to proceed against Respondent in the event of default or noncompliance with this Settlement Agreement; for violations of section 211 of the CAA, 42 U.S.C. § 7545, which are not the subject matter of this

Settlement Agreement, for other violations of law, or with respect to other matters not within the scope of this Settlement Agreement.

The following agree to the terms of this Settlement Agreement:

Respondent:

Astro Redi-Mix Concrete, Inc., a Texas Corporation

by: *Kim Durrett*
KIM DURRETT
PRESIDENT

Date: 4/27/99

United States Environmental Protection Agency

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

Date: 5/11/99