

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

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<b>In the Matter of:</b>	)	
	)	
<b>Cargill, Incorporated</b>	)	<b>SETTLEMENT AGREEMENT</b>
	)	<b>AED/MSEB - 6034</b>
	)	
<b>Respondent.</b>	)	
_____	)	

**THIS AGREEMENT** is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Cargill, Incorporated located at 12700 Whitewater Drive, Minnetonka, MN 55343-9439 (hereafter "Respondent" or "Cargill").

**Preliminary Statement**

1. On August 2, 2001, a Notice of Violation ("Notice") was issued to Respondent alleging that Respondent violated § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the reformulated gasoline regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). The EPA fuels regulations require reformulated and conventional gasoline to meet certain emission standards and impose on refiners 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 in the Notice a civil penalty of \$35,000 (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 or deny that it is in any way responsible for the alleged violations or that any violations have occurred.

6. EPA acknowledges that, if it in any future administrative or judicial proceeding to assess or collect a civil penalty for any other violation of the regulations relies upon this Agreement as evidence of prior violations by Respondent, Respondent (without in any way limiting any of its other rights and defenses) reserves all its rights to deny and/or otherwise contest the alleged violations referenced herein and to challenge and contest EPA's penalty assessment methodology.

7. 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 refiner as defined within the meaning of 40 C.F.R. § 80.2.
- b. During the week of January 18, 1999, EPA audited Respondent to determine compliance with § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the fuels regulations issued thereunder at 40 C.F.R. Part 80.
- c. As a result of this audit, EPA alleged that in 1996 and/or 1997 Cargill:
  - i. Violated 40 CFR 80.75(a)(2) by failing to calculate or report toxic emissions;

- ii. Violated 40 CFR 80.75(b)(2) by failing to file annual compliance reports for sulfur, T90 and olefins; and
- iii. Violated of 40 CFR 80.65(e)(1) by failing to determine the parameters of each batch of imported RFG prior to the gasoline leaving the import facility.
- d. Jurisdiction to settle this matter exists pursuant to § 211 of the Clean Air Act, 42 U.S.C. § 7545, 40 C.F.R. Part D, 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 \$21,000 subject to successful completion of the terms of this Agreement. Respondent agrees, without admission, to pay \$21,000 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 payment to:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
Attn.: AED/MSEB - 6034

A photocopy of the check shall be mailed simultaneously to:

Jeffrey A. Kodish, Attorney  
U.S. Environmental Protection Agency  
Mobile Sources Enforcement Branch  
12345 West Alameda Parkway, Suite 214  
Denver, CO 80228

9. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 8 of this Agreement, Respondent agrees to pay a stipulated penalty of \$21,000. 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.

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

11. 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.

12. 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.

13. 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.

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

15. 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:

**Cargill, Incorporated**

by: Bryan Price  
Printed Name: Bryan Price  
Printed Title: Asst. Vice President

Date: 10/28/01

**United States  
Environmental Protection Agency**

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

Date: 10/26/01