

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.

In the matter of:)
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)
 CONOCO INC.,) File No. AED/MSEB - 4995
)
)
 Respondent.) SETTLEMENT AGREEMENT
)

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Conoco Inc., located at 600 North Dairy Ashford, Houston, Texas (Respondent).

Preliminary Statement

1. On September 13, 1999 a Notice of Violation (NOV) was issued to Respondent alleging that Respondent had violated § 211(h) of the Clean Air Act (the Act), 42 U.S.C. § 7545(h), and the regulations promulgated thereunder at 40 CFR Part 80. The NOV stated that, on May 13, 1998, gasoline whose RVP was in excess of the applicable standard was being sold, offered for sale, or introduced into commerce and that, as the owner of the gasoline, Respondent was liable for the violations. The statutory civil penalty is Twenty-Five Thousand Dollars (\$27,500) per day for each such violation pursuant to § 211(d) of the Act, 42 U.S.C. § 7545(d).

2. After considering the gravity of the violations and Respondent's history of compliance with the Act, EPA proposed in the NOV a civil penalty of Twenty Thousand Five Hundred Fifty-Five Dollars (\$20,555).

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 Agreement is the most appropriate means of resolving the matter.

5. The parties stipulate and agree to the following facts. It is further agreed that these stipulations are applicable to this Agreement and any proceeding arising out of this Agreement or the subject matter of this Agreement.

a. On May 13, 1998, EPA conducted an inspection at the Allied Terminal, a gasoline distributor facility, located at 502 Hill Street, Chesapeake, Virginia. EPA's inspection determined that, as a result of tank stratification, the top 5 feet of premium gasoline being sold and offered for sale from Tank #7

exceeded the RVP standard of 9.0 pounds per square inch (psi). The average RVP of the gasoline was 11.50 psi. This constitutes a violation of 40 CFR § 80.27(a)(2).

b. EPA further determined that at all relevant times Respondent was the owner of the gasoline in question, making Respondent liable for the violation pursuant to 40 CFR § 80.28.

c. Respondent is conducting improved sampling and testing to prevent stratification and to assure each gallon of gasoline sold is in compliance with the applicable RVP standard and the volatility laws and regulations.

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

6. After considering the gravity of the alleged violation, Respondent's history of compliance; the terms of this Agreement, and other facts presented by Respondent, EPA has determined to conditionally remit and mitigate the civil penalty to Sixteen Thousand Four Hundred Forty-Four Dollars (\$16,444) pending successful completion of the terms of this Agreement.

Respondent agrees to pay Sixteen Thousand Four Hundred Forty-Four Dollars (\$16,444). The due date for this payment shall be thirty (30) days from the date this Agreement is

executed by EPA and received by Respondent (the due date). In accordance with the Debt Collection Act of 1982, if the debt is not paid within thirty (30) days following the due date, interest will accrue from the due date at the rate of eight percent (8%) per annum, through the date of actual payment. A late payment handling charge of Twenty Dollars (\$20.00) will also be imposed if the amount due is not paid by the due date, with an additional charge of Ten Dollars (\$10.00) for each additional thirty (30) day period. Respondent agrees to pay this amount by check with the notation "MSEB/AED - 4995," payable to the "United States of America," and mailed to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 306277M
Pittsburgh, Pennsylvania 15251
Attention: AED/MSEB - 4995

A copy of this check shall be forwarded to Angela E. Fitzgerald, at the following address:

Angela E. Fitzgerald, Attorney/Advisor
U.S. Environmental Protection Agency
401 M Street, S.W. (2242A)
Washington, D.C. 20460

7. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 6 of this Agreement, or upon default of or failure to comply with any terms of this

Agreement by Respondent, the proposed penalty of Twenty Thousand five Hundred and Fifty-five Dollars (\$20,555) shall be due and owing. The parties agree that upon such default of failure to comply, 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 § 203 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.

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

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

10. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to 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 § 203 of the Clean Air Act, 42 U.S.C. § 7522, which are not the subject matter of this Agreement; or for other violations of law.

The following agree to the terms of this Agreement:

Conoco Inc.

By: Karen Shorten
Karen L. Shorten
Manager Gulf Coast Supply & Distribution

Date: 10/27/99

United States
Environmental Protection Agency

By: Richard Buckheit
Bruce C. Buckheit, Director
Air Enforcement Division

Date: 11/9/99