

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

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<b>In the Matter of:</b>	)	
	)	
<b>Morgan Stanley Capital Group, Inc.</b>	)	<b>AED/MSEB Case No. 4653</b>
<b>1585 Broadway</b>	)	
<b>New York, New York 10036</b>	)	<b>SETTLEMENT AGREEMENT</b>
	)	
	)	
	)	
<b>Respondent.</b>	)	
_____	)	

**THIS SETTLEMENT AGREEMENT** is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Morgan Stanley Capital Group, Inc. ("Morgan Stanley") whose headquarters are located in New York, New York.

**Preliminary Statement**

- On September 13, 1996, EPA issued a Notice of violation ("Notice") to Morgan Stanley for an alleged violation of § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(k), and the regulations promulgated thereunder at 40 C.F.R. Part 80, Subpart D ("reformulated gasoline regulations"). The Notice stated that, on December 8, 1994, authorized representatives of EPA inspected a storage tank known as Tank #214 from which gasoline was allegedly being sold at Wyatt Energy, Inc. ("Wyatt") at 280 Waterfront Street in New Haven, Connecticut. The gasoline in Tank #214 was reformulated gasoline ("RFG") owned by Morgan Stanley.
- As a result of the December 8, 1994 inspection, EPA alleges that the gasoline in Tank #214 was in violation of 40 C.F.R. § 80.78(a)(1) in that it failed to meet the applicable minimum weight percent oxygen requirement in 40 C.F.R. § 80.41. According to EPA, the

gasoline in Tank #214 had a weight percent oxygen of 1.02, which is less than the applicable minimum requirement of 1.5 weight percent oxygen. EPA also asserts that, as the distributor who leased the tank in which the noncomplying gasoline was found and who stored and allegedly offered it for sale, Morgan Stanley is liable for the violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79 (a)(1) and (3).

3. Morgan Stanley admits that it was the owner of the gasoline stored in Tank #214 at the time of EPA's inspection. It denies, however, that the gasoline it owned in Tank #214 failed to meet the applicable minimum weight percent oxygen requirement in 40 C.F.R. § 80.41, denies that it was offering RFG for sale from Tank #214 on December 8, 1994 and denies that it violated EPA regulations in any other way with respect to this gasoline or any gasoline.

4. The RFG regulations prohibit any person, including a distributor, from selling or distributing, offering for sale or distribution, dispensing, supplying, offering for supply, transporting or causing the transportation of any gasoline represented as reformulated and intended for sale or use in any RFG covered area unless such gasoline meets the applicable RFG standards. Violations of these regulations may subject the violator to a maximum civil penalty of \$25,000 per day for each violation and the amount of the economic benefit or savings resulting from the violation.

5. Based on the testing done and documents obtained during the December 8, 1994 inspection, as well as Morgan Stanley's response to the "Request for Information Pursuant to Section 114 of the Clean Air Act" issued as an attachment to the September 13, 1996 Notice, EPA notified Morgan Stanley on February 5, 1997 that it proposed a civil penalty of Twenty-Five Thousand Dollars (\$25,000) ("the proposed penalty").

6. EPA desires to settle the violations cited in its Notice of September 13, 1996. Morgan Stanley does not admit that it violated any EPA regulation, but in the interests of reaching an early resolution of this matter, joins EPA in the desire to settle and to resolve the allegations set forth in EPA's Notice of September 13, 1996. In consideration of the mutual covenants and agreements contained in this document, the parties to this Settlement Agreement agree as follows for the purposes of this Settlement Agreement and any enforcement or penalty proceeding arising out of this Settlement Agreement or the subject matter of this Settlement Agreement.

#### **Terms of Settlement Agreement**

7. Settlement of this matter is in the public interest and this Settlement Agreement is the most appropriate means of resolving the matter.

8. At all relevant times, Morgan Stanley was a distributor within the meaning of 40 C.F.R. § 80.2.

9. On December 8, 1994, authorized representatives of EPA inspected a storage tank known as Tank #214 containing RFG at Wyatt Energy at 280 Waterfront Street in New Haven, Connecticut. The gasoline in Tank #214 was owned by Morgan Stanley.

10. As a result of the December 8, 1994 inspection, EPA has alleged that the RFG in Tank #214 was in violation of 40 C.F.R. § 80.78(a)(1) in that it failed to meet the applicable minimum weight percent oxygen requirement in 40 C.F.R. § 80.41.

11. Morgan Stanley denies that the gasoline it owned in Tank #214 failed to meet the requirements of 40 C.F.R. § 80.41 and asserts that it has never violated 40 C.F.R. § 80.78. It avers further that it took and continues to take actions to insure it does not sell or distribute, offer

for sale or distribution, dispense, supply, offer for supply, transport or cause the transportation of any gasoline represented as reformulated and intended for sale or use in any RFG covered area unless such gasoline meets the applicable RFG standards.

12. Jurisdiction to settle this matter exists pursuant to sections 205 and 211 of the Clean Air Act, 42 U.S.C. §§ 7524 and 7545, and other provisions of law.

13. After considering the gravity of the alleged violations, Morgan Stanley's history of compliance with the Act and the regulations, the terms of this Settlement Agreement, and other facts presented by Morgan Stanley, EPA agrees, on the conditions set forth herein, to remit and mitigate the proposed penalty to Fifteen Thousand Dollars (\$15,000), pending successful completion of the terms of this Settlement Agreement.

a. Morgan Stanley agrees to pay the sum of Fifteen Thousand Dollars (\$15,000) within thirty (30) days of the date that this Settlement Agreement is executed by EPA. In the event that Morgan Stanley does not receive a fully executed copy of this Settlement Agreement within thirty (30) days of the date of execution by EPA, the due date for payment shall be thirty (30) days from the date Morgan Stanley received a fully executed copy of this Settlement Agreement.

b. In accordance with section 3717 of the Debt Collection Act of 1982, 31 U.S.C. § 3717, if payment is not entirely made 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 twenty dollars (\$20.00) will also be imposed if payment is not made within thirty days of the due date, with an additional charge of ten dollars (\$10.00) for each subsequent thirty day period.

c. Morgan Stanley agrees to pay this amount by certified check or cashier's

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 - 4653

A photocopy of the check shall be forwarded to:

Bruce Fergusson, Attorney/Advisor  
U.S. Environmental Protection Agency  
Air Enforcement Division (2242A)  
401 M Street, S.W.  
Washington, D.C. 20460  
Attn: AED/MSEB - 4653

14. Upon default under or failure to comply with any of the terms of this Settlement Agreement by Morgan Stanley, the entire proposed penalty of Twenty-Five Thousand Dollars (\$25,000) shall be immediately due and owing. The parties agree that upon such default or failure to comply, EPA may commence an action to enforce this Settlement Agreement or to proceed in an action based on the original claim of violations of section 211(k) of the Act, 42 U.S.C. § 7545(k); or pursue any other remedies available to it. Morgan Stanley 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 between the execution of this Settlement Agreement and any default by Morgan Stanley.

15. This Settlement Agreement becomes effective upon the date that EPA signs it, at which time a copy will be returned to Morgan Stanley.

16. Morgan Stanley hereby represents that the individual or individuals executing this

Settlement Agreement on behalf of Morgan Stanley are authorized to do so and that such execution is intended and is sufficient to bind Morgan Stanley.

17. Morgan Stanley 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 in this Settlement Agreement.

18. 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.

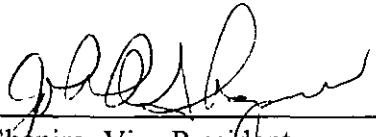
19. The validity, enforceability, and construction of all matters pertaining to this Settlement Agreement shall be determined in accordance with applicable federal law.

20. Upon completion of the terms of this Settlement Agreement, the civil violations alleged in EPA's Notice to Respondent of September 13, 1996 shall be deemed resolved in their entirety. Nothing herein shall limit the right of EPA to proceed against Morgan Stanley in the event of default or noncompliance with this Settlement Agreement; for violations of § 211 of the Clean Air Act, 42 U.S.C. § 7545, that 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 the Settlement Agreement. This Settlement Agreement in no way affects, or relieves Morgan Stanley of responsibility to comply with other state, federal or local law or regulation.

21. Any modification of this Settlement Agreement must be in writing and agreed upon by both parties to the Settlement Agreement.

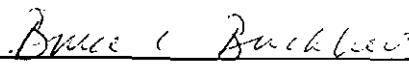
We hereby consent and agree to the above terms:

FOR MORGAN STANLEY CAPITAL GROUP, INC.

  
\_\_\_\_\_  
John Shapiro, Vice President  
Morgan Stanley Capital Group, Inc.

Date: 4/16/97

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

  
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Bruce C. Buckheit, Director  
Air Enforcement Division  
Office of Regulatory Enforcement  
Office of Enforcement and Compliance Assurance

Date: 5/20/97