

UNITED STATES
U.S. ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.

In the Matter of:)	
)	
National Cooperative Refinery Association)	File No. AED/MSEB - 4775
)	
Respondent.)	SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereinafter "EPA") and National Cooperative Refinery Association, 1391 Iron Horse Rd., P.O. Box 1404, McPherson, Kansas 67460 (hereinafter "Respondent" or "NCRA").

Preliminary Statement

1. On January 16, 1998, a Notice of Violations was issued to Respondent, simultaneously with this Settlement Agreement, alleging that Respondent violated section 211 of the Clean Air Act (Act), 42 U.S.C. §7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80 (the Fuels Regulations). The Notice stated that Respondent voluntarily discovered and promptly reported that it had sold, offered for sale, dispensed, supplied, offered for supply, transported or introduced into commerce gasoline that exceeded the applicable Reid Vapor Pressure (RVP)

requirement on May 1, 1997, at its Council Bluffs, Iowa, terminal in violation of 40 C.F.R. § 80.27.

2. Pursuant to section 211(d) of the Act, 42 U.S.C. § 7545, violators of the Fuels Regulations may be liable for a civil penalty of not more than the sum of \$25,000 for every day of a violation and the amount of economic benefit or savings resulting from each violation.

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 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 between the parties arising out of this Agreement or the subject matter of this Agreement:

a. At all relevant times, Respondent was a refiner and distributor of gasoline within the meaning of 40 C.F.R. § 80.2.

b. On May 2, 1997, Respondent reported to EPA, in writing, that on May 1, 1997, it sold, offered for sale, dispensed,

supplied, offered for supply, transported or introduced into commerce, at its Council Bluffs, Iowa terminal, gasoline that exceeded the 9.0 pounds per square inch RVP standard.

c. Respondent recovered that portion of the noncomplying gasoline that had not yet been mixed with high RVP winter gasoline in the distribution system and reblended that gasoline.

d. Respondent terminated the employee who was primarily responsible for the noncompliance. NCRA immediately upon discovering the noncompliance established a team to address blending of gasoline in preparation for the volatility season. The team created a computerized inventory and transfers records system to be used by appropriate terminal personnel. The team is being kept in place for at least one year to review operations and make recommendations as needed.

e. Since the Volatility Regulation was promulgated, NCRA has issued numerous policy, procedure and informational documents to terminal personnel regarding procedures to assure meeting RVP requirements starting on May 1 of each year. Documents have also been issued to shippers regarding volatility compliance procedures. NCRA's Environmental Policy requires employees to report violations. A NCRA hot line was established effective May 5, 1997, for employees to report any environmental compliance problems, including problems regarding supervisors or managers who are not adequately assuring compliance with any

environmental laws. Callers may remain anonymous if desired.

f. Jurisdiction to settle this matter exists pursuant to section 205 of the Act, 42 U.S.C. § 7524, and other provisions of law.

6. After considering the gravity of the violations, Respondent's history of compliance with section 211 of the Act and the Fuels Regulations; the circumstances of this case; the application of the EPA Policy on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 60 FR 66706 (Dec. 22, 1995); the terms of this Agreement; and other facts presented by Respondent, EPA has determined to remit the civil penalty in this matter to Five Thousand Five Hundred Dollars (\$5,500) pending successful completion of the terms of this Agreement.

7. Respondent agrees to do the following:

a. Payment of Civil Penalty: The Respondent agrees to pay a civil penalty of Five Thousand Five Hundred Dollars (\$5,500) to the United States of America. The due date shall be sixty (60) days from the date this Agreement is signed by EPA. In accordance with section 3717 of the Debt Collection Act of 1982, 31 U.S.C. § 3717, if the debt is not paid 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 \$20.00 will also be imposed if the amount due is not paid by the due date, with an additional charge of \$10.00 for each thirty day period. The Respondent agrees to pay the amount due by cashier's check or certified 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 - 4775

A copy of the check shall be forwarded simultaneously to Ervin Pickell at the following address:

U.S. Environmental Protection Agency
12345 W. Alameda Parkway
Suite 214
Lakewood, CO 80228

b. If it has not already done so, Respondent agrees to send to appropriate personnel at all its terminals, a memorandum or other notice, reminding employees of the requirements of the Fuels Regulations and emphasizing compliance with all company procedures to assure compliance. Proof of such notice must be sent to Ervin Pickell of EPA at the above address within 60 days of the date this Agreement is signed by EPA.

c. If it has not already done so, Respondent shall implement a written Policy setting forth a RVP sampling and testing procedure for terminals to ensure that only gasoline that complies with the applicable standard is released by all terminals starting May 1 of each year. Such procedures shall

include testing for RVP to assure compliance of the gasoline in all "for sale" storage before any gasoline is released on May 1 of each year. The policy must be forwarded to Ervin Pickell at the above address within 60 days of the date this Agreement is signed by EPA. EPA makes no representations regarding whether NCRA currently has an adequate RVP testing program during the course of the volatility season (May 1-September 15 each year).

8. Time is of the essence to this Agreement. The parties agree that upon Respondent's default or failure to comply with any terms of this Agreement, then a civil penalty of Twenty-Five Thousand Dollars (\$25,000) shall be immediately due and owing to the United States. The parties further agree that at that time and thereafter, EPA, at its sole discretion, may commence an action to enforce this Settlement Agreement for the penalty amount of Twenty-Five Thousand Dollars (\$25,000), or may pursue any other remedies available to it. Respondent expressly waives its right to assert that any action under this paragraph 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. This Agreement becomes effective on the date signed by EPA, and a copy will be faxed to Respondent within one week of the effective date. The fax will be sent to (316) 241-9347. If EPA does not mail or fax the Agreement to Respondent within one week of the date it is signed by EPA then the effective date is

delayed until the date EPA tenders the signed Agreement to Respondent by mail or fax.

10. 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, its officer, agents, directors, owners, heirs, assigns and successors.

11. Subject to the provisions of paragraph 8, above, 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.

12. 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.

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

14. Upon completion of each and every term of this Agreement, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent for violations of section 211 of the Clean Air Act, 42 U.S.C. § 7545, and the regulation thereunder which are not the

subject matter of this Agreement, or for any other violations of law.

The following agree to the terms of this Agreement:

National Cooperative Refinery Association

By

Kenneth I. Roane

Kenneth I. Roane
Vice President - Refining

Date: 9 February 1998

U.S. ENVIRONMENTAL PROTECTION AGENCY

By

Bruce C. Buckheit

Bruce C. Buckheit, Director
Air Enforcement Division

Date:

6/8/98