

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

_____ )	
In the Matter of: )	
)	
Papco Oil Co. d/b/a )	SETTLEMENT AGREEMENT
Tank Lines Inc. )	AED/MSEB - 4887
)	
Respondent. )	
_____ )	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Papco Oil Co. d/b/a Tank Lines Inc., 4920 Southern Boulevard, Virginia Beach, Virginia 23462 (hereafter "Respondent").

Preliminary Statement

1. On July 15, 1999, a Notice of Violation ("Notice") was issued to Respondent for violation of § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the reformulated gasoline ("RFG") regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). See Attachment 1. This law provides that only RFG may be sold in a covered area and sets out certain minimum and maximum standards for such gasoline. This law also provides that no person shall manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline represented as reformulated and intended for sale or use in any covered area unless such gasoline meets the applicable standards specified in 40 C.F.R. § 80.41. 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. 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

3. 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.

4. By entering into this Agreement, Respondent does not admit that it is in any way responsible for the alleged violation or that a violation has occurred.

5. 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 retailer as defined within the meaning of 40 C.F.R. § 80.2.

b. On July 8, 1998, an EPA approved compliance survey was conducted at Respondent's retail outlet located at 930 South Military Highway, Virginia Beach, Virginia. Respondent's retail outlet is located in the VOC Control Region 1 reformulated gasoline covered area where the minimum VOC emissions performance reduction standard is 32.6 percent.

c. As a result of the inspection, EPA determined that the retail outlet was selling regular gasoline that had a VOC emissions performance increase of 21.75 percent on July 8, 1998, and a reduction of .2 percent on September 8, 1998.

d. Where the gasoline contained in any storage tank at any retail outlet is found in violation, the retailer shall be deemed in violation. Therefore, Respondent is liable for violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a).

e. Jurisdiction to settle this matter exists pursuant to § 211 of the Clean Air Act, 42 U.S.C. § 7545, 40 C.F.R. § 80.20, and other provisions of law.

6. After considering the gravity of the alleged violation, Respondent's history of compliance with the regulations, EPA has determined to remit and mitigate the civil penalty to \$5,000

subject to successful completion of the terms of this Agreement.

Respondent agrees to pay \$5,000 to the United States of America in two (2) payments of \$2,500 each. The first payment shall be due 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"). The final payment shall be due on March 1, 2000. In accordance with the Debt Collection Act of 1982, if the debt is not paid within 30 days following the due date, interest will accrue from the due date as the rate of eight percent (8%) per annum 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 six percent (6%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

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 - 4887

A photocopy of the check shall be mailed simultaneously to:

J. L. Adair, Attorney/Advisor  
U.S. Environmental Protection Agency  
Mobile Source Enforcement Branch  
Air Enforcement Division (2242-A)  
401 M Street, S.W.  
Washington, D.C. 20460  
Attn.: AED/MSEB - 4887

7. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 6 of this Agreement, Respondent agrees to pay a stipulated penalty of \$10,000. This stipulated penalty is in addition to the proposed penalty. Upon such default this amount shall be immediately due and owing. Respondent further agrees 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.

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

9. Respondent hereby represents that the individual or individuals executing the Agreement on behalf of Respondent is authorized to do so and that such execution is intended and is sufficient to bind Respondent.

10. 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.

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.

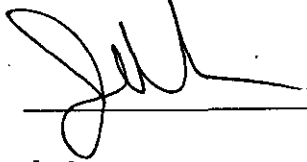
12. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

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 § 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:

John Malbon, President  
Papco Oil Co., d/b/a Tank Lines Inc.

by:

  
\_\_\_\_\_

Date:

8/16/99

United States  
Environmental Protection Agency

by:

Bruce C. Buckheit  
\_\_\_\_\_

Date:

10/13/99

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

ATTACHMENT 1



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

JUL 15 1999

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. John Malbon, President  
Papco Oil Co. d/b/a Tank Lines Inc.  
4920 Southern Boulevard  
Virginia Beach, VA 23462

Re: File No. AED/MSEB - 4887

NOTICE OF VIOLATION OF THE CLEAN AIR ACT

Dear Mr. Malbon:

On July 8, 1998, a reformulated gasoline ("RFG") survey inspection was conducted at Papco Oil Co. located at 930 South Military Highway, Virginia Beach, Virginia. On September 8, 1998, representatives of the Environmental Protection Agency ("EPA") conducted a follow-up inspection at this same facility. The inspections were conducted to determine compliance with section 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(k), and the regulations issued thereunder (40 C.F.R. part 80, subpart D).

Where inappropriate fuels are used in internal combustion engines the emissions of harmful gases can increase significantly. Notwithstanding improvements in vehicle emission controls, emissions from motor vehicles continue to make up a very large portion of all air pollution. Congress has established a program of improvement and regulation of fuels to protect our air quality from unnecessary pollution associated with the misfueling of vehicles.

EPA regulations require that gasoline sold or used in RFG covered areas must meet the standards specified for RFG. However, EPA has determined that gasoline sold or used at Papco Oil Co., which is located in an RFG covered area, failed to meet the RFG standard for VOC emissions performance reduction specified in 40 CFR § 80.41. In particular, the premium gasoline had a VOC emissions performance increase of 21.75 percent on July 8, 1998, and a reduction of .2 percent on September 8, 1998, which violates the minimum VOC emissions performance reduction of 32.6 percent. As the retailer who owns, leases, operates, controls or supervises the retail outlet where the violations were found, you are liable for violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a).



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Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize EPA to assess a civil penalty of up to \$27,500 per day for each such violation plus the economic benefit or savings resulting from the violations. In determining the appropriate penalty for violations such as these we consider the gravity of the violations, the economic benefit or savings (if any) resulting from the violations, the size of your business, your history of compliance with the Act, actions taken by you to remedy the violations and prevent future violations, the effect of the penalty on your ability to continue in business and other matters as justice may require. Based on these factors, we propose a civil penalty of \$6,000 for the violations alleged in this Notice.

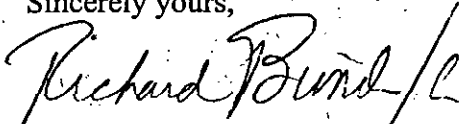
We encourage early settlement of matters such as this. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violation is corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court.

Please contact the EPA attorney designated below regarding this Notice:

J.L. Adair, Attorney  
U.S. Environmental Protection Agency  
Mobile Sources Enforcement Branch (2242A)  
401 M Street, S.W.  
Washington, D.C. 20460  
Phone number: (202) 564-1011

Let me once again emphasize that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement in this matter.

Sincerely yours,



Bruce C. Buckheit, Director  
Air Enforcement Division