

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

In the Matter of:)
)
Atlantic States Cast Iron Pipe Company,)
)
Respondent)

SETTLEMENT AGREEMENT
AED/MSEB- 7823

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Atlantic States Cast Iron Pipe Company (Respondent), 183 Sitgreaves Street, Phillipsburg, NJ 08865.

Preliminary Statement

1. On July 17, 2009, EPA issued a Notice of Violation File No. AED/MSED-7823 (NOV) to Respondent alleging that Respondent violated section 211 of the Clean Air Act (CAA), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80, Subpart I (fuels regulations).
2. The NOV alleged that Respondent violated 40 C.F.R. §§ 80.610(a) and 80.612(a) by selling, offering for sale, dispensing, supplying, offering for supply, storing or transporting heating oil for use in nonroad vehicles or engines.
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.
4. By entering into this Agreement, Respondent neither admits nor denies that it has committed any of the alleged violations.

Terms of Agreement

5. The parties stipulate and agree to the matters identified in this Paragraph. It is further agreed that these stipulations are applicable to this settlement agreement (Agreement) and any enforcement or penalty arising out of this Agreement or the subject matter of this Agreement:
- a. 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;
 - b. Jurisdiction to settle this matter exists pursuant to section 211 of the CAA, 42 U.S.C. § 7545, 40 C.F.R. Part 80 and other provisions of law;
 - c. At all relevant times, Respondent was a wholesale purchaser-consumer within the meaning of 40 C.F.R. § 80.2(l).
 - d. The Agreement resolves, as to the Respondent, the violation alleged in EPA's July 17, 2009, NOV identified in Paragraph 1 of this Agreement.
6. Respondent avers that it has corrected its practices to address the conditions that created the alleged violations and to prevent their future occurrence.
7. Respondent agrees to pay a civil penalty of \$10,000 to the United States of America by no later than thirty days from the effective date of this Agreement. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717, plus the stipulated penalties as specified in Paragraph 10 of this Agreement. Respondent agrees to pay the amount by certified check or cashier's check payable to the "United States of America," and to mail the payment to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center

P.O. Box 979077
St. Louis, MO 63197-9000
Attn: AED/MSEB -7823.

Respondent may also pay online at www.pay.gov. From the "Search Public Form" field, Respondent shall enter "SFO 1.1", click "EPA Miscellaneous Payments - Cincinnati Finance Center", and complete the SFO Form Number 1.1.

Notice

8. A copy of the payment shall be faxed to Jocelyn Adair, Esq., at (202) 564-0069 no later than twenty-four (24) hours after mailing the payment. A copy of the payment and all correspondence to EPA concerning this Agreement shall be sent to:

(Regular Mail)

Jocelyn Adair, Esq.
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

(Courier Service)

Jocelyn Adair, Esq.
U.S. EPA
Ariel Rios South, Room 1109A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

9. Under 28 U.S.C. § 162(f), penalties paid pursuant to this Agreement are not deductible for federal tax purposes.

Stipulated Penalties

10. Respondent shall pay stipulated penalties of \$100 per day for failure to timely pay the civil penalty, or provide proof thereof, pursuant Paragraphs 7 and 8 of this Agreement.

General Provisions

11. This Agreement becomes effective upon the date signed by EPA, after which time EPA shall forward a copy to the Respondent's attorney.
12. Notwithstanding any other provision of this Agreement, Respondent agrees that upon default or failure of Respondent to comply with the terms of this Agreement, EPA may

refer this matter to the United States Attorney General for collection pursuant to section 205(c) of the CAA, 42 U.S.C. § 7524(c), commence an action to enforce this Agreement or to recover the civil penalty pursuant to section 205 of the CAA, or pursue any other available remedies. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, or other statutes of limitation. Respondent acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement, *see* 31 U.S.C. § 7701.

13. The Respondent represents that the individual or individuals executing this Agreement on behalf of Respondent is authorized to do so and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.
14. 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.
15. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
16. The termination and resolution of violations described in Paragraph 17 of this Agreement is conditional upon the truthfulness, accuracy, and completeness of Respondent's disclosures and representations to EPA.

Effect of Agreement

17. Upon completion of the terms of this Agreement, the alleged violations described 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 section 211 of the CAA, 42 U.S.C. § 7545, which are not the subject matter of this Agreement, 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 laws or regulations.

The following parties agree to the terms of this Agreement:

Administrative Settlement Agreement - In the Matter of Atlantic States Cast Iron Pipe Company; AED/MSEB-7823


Atlantic States Cast Iron Pipe Company

By: 

Date: 9/14/11

Print Name: DALE SCHMELZLE

Print Title: VICE PRESIDENT/GM

Federal Tax Identification Number: 

Administrative Settlement Agreement *In the Matter of Atlantic States Cast Iron Pipe Company; AED-MSEB - 7823*

U.S. Environmental Protection Agency

By: 

Phillip A. Brooks, Director
Air Enforcement Division

Date: 9/22/11