

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

_____	)	
In the Matter of:	)	
	)	SETTLEMENT AGREEMENT
Gladieux Trading and Marketing Co., L.P.	)	AED/MSEB - # 7066
	)	
Respondent.	)	
_____	)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Gladieux Trading and Marketing Co., L.P. (Respondent), which is located at 4133 New Haven Avenue, Fort Wayne, Indiana 46803.

Preliminary Statement

1. On January 24, 2005, EPA issued a Notice of Violation (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 (Fuels Regulations). The Fuels Regulations require conventional gasoline to meet certain emission standards and impose a number of quality assurance, recordkeeping, and reporting requirements on refiners.
2. After considering the gravity of the violations, Respondent's history of compliance with the regulations, and the size of Respondent's business, EPA proposed in the NOV a civil penalty of \$194,000.
3. EPA and Respondent (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 stipulate and agree to the following matters. It is further agreed that these stipulations are applicable to this settlement agreement (Agreement) and any enforcement or penalty proceeding 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 refiner within the meaning of 40 C.F.R. § 80.2(i). During the relevant time period, Respondent produced gasoline at its transmix processing facility located in Huntington, Indiana;

d. EPA alleged in the January 24, 2005, NOV that Respondent violated:

1. 40 C.F.R. § 80.27(a)(2)(i) by selling, offering to sell, supplying or introducing into commerce gasoline with an Reid vapor pressure (RVP) that exceeded the applicable RVP standard on or about April 24, 2003 (Batch Id. No. 308);

2. 40 C.F.R. § 80.27(a)(2)(i) by selling, offering to sell, supplying or introducing into commerce gasoline with an RVP that exceeded the applicable RVP standard on or about May 2, 2003 (Batch Id. No. 309);

3. 40 C.F.R. § 80.27(a)(2)(i) by selling, offering to sell, supplying or introducing into commerce gasoline with an RVP that exceeded the applicable RVP standard on or about April 30, 2004 (Batch Id. No. 413);

4. 40 C.F.R. § 80.27(a)(2)(i) by selling, offering to sell, supplying or introducing into commerce gasoline with an RVP that exceeded the applicable RVP standard on or about May 7, 2004 (Batch Id. No. 414);
5. 40 C.F.R. § 80.105(d) by failing to file its Anti-Dumping Program Annual Report for the 2003 reporting year in a timely manner;
6. 40 C.F.R. § 80.910(a) by failing to submit a toxics baseline application or a statement declaring that it did not have sufficient data and intended to use the default compliance baseline in a timely manner;
7. 40 C.F.R. § 80.105(a)(4)(iii)(A) by failing to accurately report its applicable exhaust toxics emissions standard in its 2003 Anti-Dumping Program Annual Report;
8. 40 C.F.R. § 80.105(a)(4)(iii)(B) by failing to accurately report its applicable NOx emissions standard in its 2003 Anti-Dumping Program Annual Report;
9. 40 C.F.R. § 80.105(a)(5)(iii) by failing to report the volume of each batch of gasoline that it produced during the 2003 reporting year;
10. 40 C.F.R. § 80.105(a)(6) by misreporting the VOC-control status of the gasoline that it produced during the 2003 reporting year;
11. 40 C.F.R. § 80.990(a)(2) by misreporting its Mobile Source Air Toxics (MSAT) compliance baseline during the 2003 reporting year; and
12. 40 C.F.R. § 80.815(f) and 40 C.F.R. § 80.990 by misreporting the number of credits that it generated under the MSAT regulations during the 2003 reporting year;

e. Respondent agrees to take the following actions designed to prevent future violations of the Fuels Regulations:

1. Within 120 days from the date of this Agreement, Respondent will implement a compliance assurance plan that is reasonably calculated to prevent future violations of the Fuels Regulations. The compliance assurance plan shall, at a minimum, set forth a procedure to insure compliance with the Volatility regulations at 40 C.F.R. § 80.27, the Anti-dumping regulations at 40 C.F.R. Part 80, Subpart E, the MSAT regulations at 40 C.F.R. Part 80, Subpart J, the Gasoline Sulfur regulations at 40 C.F.R. Part 80, Subpart H, and the substantially similar rule set forth in section 211(f) of the CAA, 42 U.S.C. § 7545(f). Respondent shall retain the services of a firm with substantial consulting experience relating to compliance with the Fuels Regulations to assist in the preparation of this compliance assurance plan; and

2. In addition to the sampling and testing requirements set forth in the Fuels Regulations, Respondent shall sample and test each batch of gasoline produced for sale during the regulatory control period (May 1 to September 15) using the regulatory test method set forth in 40 C.F.R § 80.46(c) prior to releasing the batch from its refinery. Respondent shall only release a batch of gasoline produced for sale during the regulatory control period if the sample tested has an RVP of less than 9.0 psi. Respondent shall maintain the results of all tests conducted pursuant to this paragraph for a period of five years.

5. After considering the gravity of the violations, Respondent's history of compliance with the Fuels Regulations, the terms of this Agreement, and other facts presented by the Respondent, EPA has determined to remit and mitigate the civil penalty for the violations identified in the January 24, 2005, NOV to \$175,000, subject to successful completion of the terms of this Agreement. Respondent agrees to pay \$175,000 to the United States of America within sixty days from the date that this Agreement is executed by EPA and returned to Respondent (due date). Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. The civil penalty shall be paid by check made payable to the "United States of America," and the payment shall be mailed to:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
Attn.: AED/MSEB - 7066

A photocopy of the check shall be mailed simultaneously to:

Jeff Kodish, Attorney  
U.S. Environmental Protection Agency  
12345 West Alameda Parkway, Suite 214  
Denver, CO 80228

6. Time is of the essence to this Agreement. Respondent agrees to pay the following stipulated penalties for each failure to comply with the terms of this Agreement. These stipulated penalties are in addition to the penalty set forth in paragraph 5 of this Agreement:

- a. For failure to timely pay the penalty, or provide proof thereof, pursuant to paragraph 5, \$1,000 per day;
- b. For failure to implement a compliance assurance plan reasonably calculated to prevent future violations, pursuant to paragraph 4(e)(1), \$250 per day, and

- c. For failure to sample and test each batch of gasoline for RVP using the regulatory test method set forth in 40 C.F.R § 80.46(c) prior to releasing it from its refinery, pursuant to paragraph 4(e)(2), \$10,000 per batch.

7. The parties further agree that upon default or failure to comply, EPA may refer this matter to the United States Attorney General for collection pursuant to section 211(d) of the CAA, 42 U.S.C. § 7545(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to section 211 of the CAA; 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 allegations set forth herein, and Respondent expressly waives its right to assert that any action based upon the allegations set forth herein 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 signed by the EPA, after which time a copy will be forwarded to the Respondent.

9. Respondent hereby represents that the individual executing this Agreement on behalf of Respondent is authorized to do so and that such execution is intended and is sufficient to bind the party and, as applicable, 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 agreed 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. The effect of the settlement described in paragraph 14, below, is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA, as memorialized in the emails, correspondence and laboratory results that Respondent provided to EPA from May 28, 2004, through January 24, 2005.

14. 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 section 211 of the CAA, 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:

**Gladieux Trading and Marketing Co., L.P.**

by: Steven Uebelhoer Date: 4-29-05  
Typed Name  
Typed Title Steven Uebelhoer President

**Administrative Settlement Agreement *In the Matter of: Gladioux Trading and Marketing Co., L.P.***

**United States Environmental Protection Agency**

by:  \_\_\_\_\_  
Adam M. Kushner  
Acting Director,  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance

Date: 5.4.05