

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

In the Matter of:)	
)	
Athey Products Corporation)	SETTLEMENT AGREEMENT
)	
Respondent.)	AED/MSEB - 5066
)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Athey Products Corporation, 1839 South Main street, Wake Forest, North Carolina 27587 (hereafter "Respondent" or "Athey").

Preliminary Statement

1. On May 1, 2000, a Notice of Violation ("Notice") was issued to Athey for violations of § 211(g) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). See Attachment 1. The misfueling provision of section 211 of the Act provides that no person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 percent (by weight). 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. After considering the gravity of the alleged violations, Respondent's history of compliance with the misfueling provisions of the Act, and the size of Respondent's business, EPA proposed a civil penalty of \$82,500 (hereafter "the proposed penalty").

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 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.

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

6. 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, but shall not be deemed admissible in any other proceeding:

a. At all relevant times, Respondent was a person as defined within the meaning of section 302(e) of the Act, 42 U.S.C. § 7602(e).

b. On March 30, 1998, EPA inspected Athey's facility, located at 1839 South Main Street, Wake Forest, North Carolina 27587.

c. During the inspection, EPA collected and analyzed samples from the diesel fuel storage tank and various vehicles manufactured by Athey. From these analyses, EPA has determined that Athey introduced or caused or allowed the introduction into three (3) of its motor vehicles diesel fuel whose sulfur content exceeded the 0.05 wt. percent standard and was dispensing such fuel for use in motor vehicles. EPA also determined that from October 1995 to March 30, 1998, Athey may have misfueled hundreds of other new motor vehicles that it sold and shipped to its customers. Therefore, Respondent is liable for violations of § 211(g) of the Act, 42 U.S.C. § 7545(g).

d. 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.

7. After considering the gravity of the alleged violations, Respondent's history of compliance with the regulations, EPA has determined to remit and mitigate the civil penalty to \$74,000 subject to successful completion of the terms of this Agreement.

Respondent agrees to pay \$74,000 to the United States of America in four (4) consecutive quarterly payments of \$18,500. 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"). Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717.

Respondent agrees to pay the amount by check made payable to the "United States of America," and to mail the payments to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn.: AED/MSEB - 5066

A photocopy of each payment shall be mailed simultaneously to:

J. L. Adair, Attorney/Advisor
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
Air Enforcement Division (2242-A)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Attn.: AED/MSEB - 5066

8. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 7 of this Agreement, Respondent agrees to pay a stipulated penalty of \$74,000. This stipulated penalty is in addition to the proposed penalty. Upon such default this amount shall be immediately due and owing. The parties further agree 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.

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

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.

11. 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.

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 thereby.

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 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:

Athey Products Corporation

by: W. Warden CFO

Date: 7.6.00

United States
Environmental Protection Agency

by: Richard Bindiff

Date: 8-1-00

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

ATTACHMENT 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
May 2, 2000

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Thomas Nelson, President
Athey Products Corporation
1839 South Main Street
Wake Forest, North Carolina 27587

Re: File No. AED/MSEB - 5066
Notice of Violation of the Clean Air Act

Dear Mr. Nelson:

On March 30, 1998, authorized representatives of the United States Environmental Protection Agency ("EPA") inspected Athey Products Corporation ("Athey"), located at 1839 South Main Street, Wake Forest, North Carolina 27587. The inspection was conducted to determine compliance with § 211(g) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(g), and the regulations issued thereunder (40 C.F.R. Part 80).

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.

The misfueling provision of the Act provides that no person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 percent (by weight). EPA collected and analyzed samples from the diesel fuel storage tank and various vehicles manufactured by Athey. From these analyses, EPA has determined that Athey introduced or caused or allowed the introduction into three (3) of its motor vehicles diesel fuel whose sulfur content exceeded the 0.05 wt. percent standard and was dispensing such fuel for use in motor vehicles. See Enclosure. EPA also determined that from October 1995 to March 30, 1998, Athey may have misfueled four hundred and ninety-six (496) new motor vehicles that it sold and shipped to its customers. Therefore, Athey is liable for violations of § 211(g) of the Act, 42 U.S.C. § 7545(g).

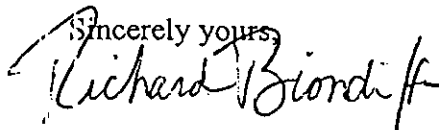
Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize EPA to assess a civil penalty of up to \$27,500 per day for each violation plus the economic benefit or savings resulting from the violations. In determining the appropriate penalty for violations such as this, we consider the gravity of the violations, the economic benefit of 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 \$82,500 for the violations alleged in this Notice.

We encourage early settlement of such matters. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violations were 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.

Jocelyn L. Adair, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch (2242-A)
Air Enforcement Division
1200 Pennsylvania Avenue, N.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

Enclosure

Enclosure

Table 1: Sulfur Analysis

Make/Model/Year & VIN of Motor Vehicle:	Company #	Sulfur Content
Sweeper/M-8A/1997/1A9P24DR7WR059001	M-7169	.3120
Sweeper/RA-730 /1997/1A9X27...K3WR059002	M-7178	.3124
Sweeper/AV-445/1997/1A9JL8D...K1WR059009	M-7098	.2509
Bulk Tank		.2921

Table 2: Total Number of Motor Vehicles Misfueled (See Attachment)

Models Misfueled	Number Misfueled
M-8A	52
M-9 ABD	25
M-9 AHL	337
AV-445	42
RA-730	37
Total	496