

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

<b>In the Matter of:</b>  <b>Equiva Trading Company</b>  <b>Respondent.</b>	) ) ) ) ) ) )	<b>SETTLEMENT AGREEMENT</b> <b>AED/MSEB - 5085</b>
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**THIS AGREEMENT** is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Equiva Trading Company, acting on behalf of Shell Oil Company, 910 Louisiana, Room 1136, Houston, Texas 77002 (hereafter "Respondent" or "Equiva"). The purpose of this Agreement is to resolve possible violations of § 211 of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the antidumping fuels regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations").

**Preliminary Statement**

1. During 1998, Equiva, on behalf of Shell Oil Company ("Shell), the importer of record, imported into the United States gasoline subject to the statutory antidumping fuels requirements and implementing regulations. On May 19, 1999, Respondent and Shell disclosed that this gasoline may have violated the antidumping fuels requirements by failing to meet the 1998 annual average anti-dumping statutory baseline for emissions of exhaust toxics and oxides of nitrogen (NOx).
2. Violators of the antidumping fuels provisions 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.
3. After considering the gravity of the alleged violations, Respondent's history of compliance with the regulations, and the size of Respondent's business, EPA proposes to resolve this matter for a civil penalty of \$385,000 ("hereafter "the proposed penalty").
4. 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

5. 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.
6. By entering into this Agreement, Respondent does not admit that it is in any way responsible for the alleged violations or that any violations have occurred.
7. 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, Shell was an importer as defined within the meaning of 40 C.F.R. § 80.2.
  - b. According to the anti-dumping regulations, 40 C.F.R. Part 80, the exhaust toxics emissions standard is 50.67 mg/mi and the exhaust NOx emissions standard is 714.4 mg/mi.
  - c. According to Respondent's May 12, 1999, Anti-dumping Program Annual Report for 1998, EPA Form 3520-20H, Respondent's exhaust toxics emissions were 59.3 mg/mi and its exhaust NOx emissions were 827.9 mg/mi.
  - d. As an importer of the gasoline that failed to comply with the annual average emissions standard, Respondent is subject to the anti-dumping regulations and the Clean Air Act.
  - 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.
8. After considering the gravity of the alleged violations and Respondent's history of compliance with the regulations, EPA has determined to mitigate the civil penalty to \$385,000. Respondent agrees to pay \$385,000 to the United States of America 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 payment to:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
Attn.: AED/MSEB - 5085

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)  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
Attn.: AED/MSEB - 5085

9. Time is of the essence to this Agreement. Upon default or failure to timely perform pursuant to paragraph 8 of this Agreement, Respondent agrees to pay a stipulated penalty of \$385,000. 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.
10. EPA agrees to provide a written notice to Respondent before finding Respondent in default. EPA agrees to send the notice by certified mail, return receipt requested. Respondent shall have five (5) business days to receive the notice and ten (10) business days to cure the default before stipulated penalties accrue or enforcement action is taken. The notice and any correspondence concerning this Agreement shall be sent to Respondent's attorneys:

Humberto Molina, Jr., Esquire  
Equiva Services, LLC  
SH&E/Environmental  
1136 One Shell Plaza  
Houston, Texas 77002  
Facsimile: (713) 241-4081

11. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.
12. 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.
13. 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.
14. 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.
15. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
16. Upon completion of the terms of this Agreement, this matter shall be deemed a full settlement of all claims by EPA against Respondent and Shell, and their respective parents, subsidiaries, and affiliates for civil penalties arising from the facts identified in paragraph 1 of the Agreement. Nothing herein shall limit the right of EPA to proceed against Respondent or Shell 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:

Equiva Trading Company

by: Michael D. Schulze  
Michael D. Schulze  
General Manager  
Gasoline Trading

Date: 11/9/2000

United States  
Environmental Protection Agency

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

Date: 11-22-00