

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

_____)
In the Matter of:)
)
NEWCOMB OIL CO.)
)
Respondent.)
_____)

SETTLEMENT AGREEMENT
AED/MSEB - 4776

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Newcomb Oil Co., 1360 E. John Rowan Blvd., P.O. Box 390, Bardstown, Kentucky 40004 (hereafter "Respondent").

Preliminary Statement

1. On February 25, 1998, a Notice of Violation ("Notice") and Request for Information 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. The applicable regulations provide that no person may combine any VOC-controlled reformulated gasoline that is produced using ethanol with any VOC-controlled reformulated gasoline that is produced using any other oxygenate during the period January 1 through September 15. This law also subjects violators to a maximum civil penalty of \$25,000 per day for each violation in addition to recovery of the amount of the economic benefit or savings resulting from the violation.

2. After considering the gravity of the violations, the economic benefit or savings (if any) resulting from the violations, Respondent's history of compliance with the Clean Air Act, the size of Respondent's business, Respondent's actions to remedy the violations and/or to prevent recurrence of further violations, the effect of the penalty on Respondent's ability to continue in business, and such other matters as justice may require, the EPA proposes a civil penalty of thirty-five thousand dollars (\$35,000) (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 violation or that any 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:

a. At all relevant times, Respondent was a retailer and distributor as defined within the meaning of 40 C.F.R. § 80.2.

b. On August 20, 1997, EPA conducted an inspection at Respondent's retail outlet located at 3901 Taylor Blvd., Louisville, Kentucky 40215. The inspection was conducted to determine compliance with section 211(k) of the Act, 42 U.S.C. § 7545(k) and the regulations issued thereunder (40 C.F.R. Part 80, Subpart D).

c. As a result of the inspection and follow-up investigation, EPA has determined that during August 1997, Respondent combined and offered for sale at its retail outlet, Five Star Mart # 863, VOC-controlled reformulated gasoline that contained ethanol and MTBE.

d. As a result of the Information Request, EPA determined that during May through July 1997, Respondent combined and offered for sale at its retail outlet, Five Star Mart # 863, thirty-five (35) loads of VOC-controlled reformulated gasoline that contained ethanol and MTBE.

e. Where the gasoline contained in any storage tank at any retail outlet is found in violation, 40 C.F.R. 80.79(a)(1) states that the retailer and/or distributor shall be deemed in violation. Therefore, EPA has determined that as the retailer and/or distributor who combined ethanol VOC-controlled reformulated gasoline with MTBE VOC-controlled reformulated gasoline, Respondent is liable for violation of § 80.78(a)(8).

f. 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. Respondent agrees to pay thirty-five thousand dollars (\$35,000) 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"). 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 payments to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn.: AED/MSEB - 4776

A photocopy of the checks shall be mailed simultaneously to:

J. L. Adair, Attorney/Advisor
U.S. Environmental Protection Agency
MSEB/AED (2242-A)
401 M Street, S.W.
Washington, D.C. 20460
Attn.: AED/MSEB - 4776

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 \$70,000. 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:

Newcomb Oil Co.

by: J. Newcomb Jr President

Date: 7/30/98

United States
Environmental Protection Agency

by: Richard Bindi /s/

Date: 8/20/98

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

ATTACHMENT 1



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

FEB 25 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James L. Newcomb, Jr., Vice President of
Newcomb Oil Company
d/b/a Five Star Food Mart
1360 E. John Rowan Blvd.
P.O. Box 390
Bardstown, Kentucky 40004

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Re: File No. AED/MSEB -4776

NOTICE OF VIOLATION OF THE CLEAN AIR ACT AND
REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF THE
CLEAN AIR ACT

Dear Mr. Newcomb:

On August 20, 1997, the U.S. Environmental Protection Agency ("EPA") conducted an inspection of your gasoline retail outlet, Five Star Mart # 863, located at 3901 Taylor Blvd., Louisville, Kentucky 40215. The inspection was 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.

The applicable regulations provide that no person may combine any VOC-controlled reformulated gasoline that is produced using ethanol with any VOC-controlled reformulated gasoline that is produced using any other oxygenate during the period January 1 through September 15. This law also subjects violators to a maximum civil penalty of \$25,000 per day for each violation in addition to recovery of the amount of the economic benefit or savings resulting from the violation.

As a result of the inspection and follow-up investigation, EPA has determined that during August and September 1996 Five Star Mart # 863 was selling VOC-controlled reformulated gasoline that contained ethanol and MTBE. Samples of the regular gasoline

taken from the retail outlet contained 5.25 vol % ethanol and 4.35 vol % MTBE. Where the gasoline contained in any storage tank at any retail outlet is found in violation, 40 C.F.R. 80.79(a)(1) states that the retailer and/or distributor shall be deemed in violation. As a retailer and distributor who combined ethanol VOC-controlled reformulated gasoline with MTBE VOC-controlled reformulated gasoline, you are liable for violation of § 80.78(a)(8).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize the Administrator of EPA to assess a civil penalty of up to \$25,000 for every day of each violation and the economic benefit or savings resulting from the violation. In determining the appropriate penalty for the noticed violation, we consider the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of your business, your history of compliance with the Clean Air Act, actions taken by you to remedy the violation and to prevent recurrence of further violations, the effect of the penalty on your ability to continue in business and such other matters as justice may require.

We believe it is in your interest to demonstrate that remission or compromise of the penalty amount is appropriate. However, in order to assist us in developing the appropriate penalty and settlement positions, we have prepared the enclosed Request for Information. Under the law you are required to submit this information or be subject to additional penalties and other sanctions above and beyond those assessed for the fuel violation identified in this Notice. In addition, if you do not submit this information in a timely manner, we will be forced to make assumptions with regard to the factors to consider in determining the appropriate amount of civil penalty which may not be in your interest or whether remission or compromise of the civil penalty amount is appropriate.

We encourage early settlement of such matters. 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.

The EPA attorney designated below has been assigned to this case. All information should be sent to the case attorney. Please contact this attorney regarding the Notice of Violation and Request for Information.

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

Please 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
Bruce C. Buckheit, Director
Air Enforcement Division

Enclosure