

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.

_____)	
In the matter of:)	
)	
SUN COMPANY, INC.)	File No. MSEB/AED - 4823
)	
)	SETTLEMENT AGREEMENT
Respondent.)	
_____)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Sun Company, Inc. located in Philadelphia, Pennsylvania (Respondent).

Preliminary Statement

1. On May 26, 1998, a Notice of Violation (NOV) was issued to Respondent alleging that Respondent had violated § 211 of the Clean Air Act (the Act), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 CFR Part 80. The NOV stated that on September 12, 1997, reformulated gasoline (RFG) was manufactured and sold or distributed, offered for sale or distribution, dispensed, supplied, offered for supply, stored, transported or caused to be transported that did not meet the requirements of RFG in that it failed to meet the Reid Vapor Pressure (RVP) standard for Nashua, New Hampshire, a covered RFG area. The premium unleaded gasoline had an RVP of 8.72 psi which violates the applicable standard of 8.3 psi. Respondent was liable for

this violation as the refiner whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name appeared at the facility where the violation was found. The NOV further stated that the statutory civil penalty is Twenty-Five Thousand Dollars (\$25,000) per day for each such violation plus the amount of economic benefit or savings resulting from the violation pursuant to § 211(d) of the Act, 42 U.S.C. § 7545(d). The proposed civil penalty for the violation alleged in the NOV was Three Thousand Six Hundred Forty-nine Dollars (\$3,649).

2. 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

3. 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.

4. The parties stipulate and agree to the following facts. It is further agreed that these stipulations are applicable to this Agreement and any proceeding arising out of this Agreement or the subject matter of this Agreement.

a. At all relevant times Respondent was a refiner within the meaning of 40 CFR § 80.2(i).

b. On September 12, 1997, an inspection was conducted at the Broad Street Sunoco branded gasoline retail outlet located at

90 Broad Street, Nashua, New Hampshire. This inspection determined that premium gasoline having a greater than the allowable maximum psi was being sold or offered for sale at the time of the inspection. The premium gasoline's RVP was 8.72 psi, more than the allowable maximum of 8.3 psi. This constitutes a violation of 40 C.F.R. § 80.78(a)(1).

c. EPA further determined that Respondent was liable for the violation pursuant to 40 CFR § 80.28, as the refiner whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name appeared at the facility.

d. Respondent will continue to send reminder notices to the retail outlets with stand alone premium pumps to assist in the transition to VOC controlled product.

e. Jurisdiction to settle this matter exists pursuant to section 211 of the Act, 42 U.S.C. § 7545, 40 CFR Part 80, and other provisions of law.

5. After considering the gravity of the alleged violation, Respondent's history of compliance, the terms of this Agreement, and other facts presented by Respondent, EPA has determined to conditionally remit and mitigate the civil penalty to Two Thousand One Hundred Ninety-Five Dollars (\$2,195). Respondent agrees to pay Two Thousand One Hundred Ninety-Five Dollars (\$2,195) within thirty days of receipt of a signed settlement agreement from EPA. In the event Respondent does not receive a copy of this Agreement within thirty (30) days following its

execution by EPA, the due date shall be thirty (30) days following the date of Respondent's receipt of an executed copy. In accordance with the Debt Collection Act of 1982, if the debt is not paid within thirty (30) days following the due date, interest will accrue from the due date at the rate of eight percent (8%) per annum, through the date of actual payment. A late payment handling charge of Twenty Dollars (\$20.00) will also be imposed if the amount due is not paid by the due date, with an additional charge of Ten Dollars (\$10.00) for each additional thirty (30) day period. Respondent agrees to pay this amount by cashier's check or certified check with the notation "AED/MSEB - 4823" payable to the "United States of America," and mailed to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attention: AED/MSEB - 4823

A copy of this check shall be forwarded to Judith E. Graham, at the following address:

Judith E. Graham, Attorney/Advisor
U.S. Environmental Protection Agency
Western Field Office
12345 W. Alameda Parkway, Suite 214
Denver, CO 80228

6. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 5 of this Agreement, or upon default of or failure to comply with any terms of this Agreement by Respondent, the parties agree that upon such default

of failure to comply, EPA may commence an action to enforce this Agreement or to recover the civil penalty pursuant to § 205 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 § 203 of the Act, 42 U.S.C.

§ 7522, 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 the passage of time.

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

8. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution intended and is sufficient to bind Respondent, its officers, agents, directors, owners, heirs, assigns, and successors.

9. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to matters consented to herein. Notwithstanding its agreement to settle or resolve this matter, Respondent neither admits or denies the findings of fact or conclusions or law contained herein.

10. 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.

11. The validity, enforceability and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

12. 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 § 203 of the Clean Air Act, 42 U.S.C. § 7522, which are not the subject matter of this Agreement; or for other violations of law.

The following agree to the terms of this Agreement:



SUN COMPANY, INC.

by: _____

John L. Cook

Date: 7-7-98

United States
Environmental Protection Agency

by: _____

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

Date: _____

ANNUAL MESSAGE TO DISTRIBUTORS

Each spring we change over to a "summer gasoline." This gasoline is blended to meet the seasonal performance requirements of the automobile and to meet EPA vapor pressure or VOC% reduction requirements.

Terminals have "summer gasoline" by May 1st each year. The EPA requires that retail locations meet "summer gasoline" requirements by June 1st. It is the distributor's responsibility to insure proper product change over to meet these requirements. The potential fine for distributors is \$25,000 a day for each day a non-compliant fuel is sold.

At most locations this is not a problem as the inventory at retail is changed over several times in a month. However, at some locations a situation may exist where the product is not changed over. There may simply be very low sales out of a particular underground tank or maintenance work may be occurring at the site slowing product sales. In these situations special steps should be taken to turn over the inventory.

Particular attention must be given to Ultra "Straight" tanks which often exhibit slow turnover of product. These are tanks storing Ultra not used for blending mid grades. The EPA has found locations where proper attention was not given to these tanks and fines have been levied.

It is not recommended that underground storage tanks be used for Ultra "Straight" service.

The following rule of thumb should be helpful in identifying locations that would be of concern.

During the month of May each underground storage tank should receive at least two deliveries on top of an inventory of no more than 20% of the delivery.

If this criteria is not met it is possible that the product will not comply with EPA regulations. These locations should be identified each year and steps taken to assure proper product turnover by June 1st.

If you have any questions or need guidance please contact your sales representative.

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SUN COMPANY, INC.

by: John L. Coll

Date: 7-7-98

United States
Environmental Protection Agency

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

Date: 8/20/98

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