UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C.

In the matter of:	)	
Tosco Corporation	)	File No. MSEB/AED - **5093**
Respondent.	)	SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Tosco Corporation (Respondent).

A. Preliminary Statement

1. On September 8, 2000, 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 C.F.R. Part 80. The NOV stated that on various occasions between November, 1997 and November, 1999, either gasoline was sold and offered for sale in violation of 40 C.F.R. § 80.41, and 40 C.F.R. § 80.78(a)(1), or the values for certain properties of gasoline were not determined in accordance with specified methods in violation of 40 C.F.R. § 80.65. The Notice also stated that the Respondent, as the refiner/distributor of the product, was liable for these violations pursuant to 40 C.F.R. § 80.79(a). The NOV further

stated that the statutory civil penalty is Twenty-Seven Thousand Five Hundred Dollars ($27,500) per day for each such violation plus the economic benefit or savings resulting from the violations pursuant to § 211(d) of the Act, 42 U.S.C. § 7545(d).

2. After considering the gravity of the violations and Respondent's history of compliance with the Act, EPA proposed in the NOV a civil penalty of One Hundred Eight-Three Thousand Dollars ($183,000).

3. By entering into this Agreement, Respondent neither admits nor denies any of the allegations found in the NOV or this Agreement.

4. The EPA and the Respondent desire to settle this matter according to the mutual covenants and agreements contained herein. The consideration is acknowledged to be adequate, and the EPA and the Respondent agree as set forth herein.

B. Terms of Agreement

5. The EPA and the Respondent 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. As contained in EPA's NOV to the Respondent and other information, the EPA alleges the following:

a. At all relevant times, the Respondent was a refiner and/or distributor within the meanings of 40 C.F.R. § 80.2 and/or a person within the meaning of section 302(e) of the Clean Air Act 42 U.S.C. § 7602(e).

b. On December 12, 1997, Respondent self-reported that Respondent's Los Angeles' Refinery shipped 3,518,088 gallons of gasoline from batch 5960-08075-00285 between November 16-29, 1997 with a per-gallon toxics reduction of 13.6 %, which is below the standard of 15.0% for toxics reduction. The EPA has determined that this constitutes a violation of 40 C.F.R. § 80.41 and that Respondent, as the refiner of this gasoline, is liable for this violation. Respondent has taken the following measures to prevent recurrence: (a)the automated compliance tracking program now identifies feasible ranges for each parameter; (b) two people now perform the toxics reduction calculation, and (c) the shift supervisor must cross-check the calculation before approving a blend. Additionally, since the gasoline went to Phoenix, Arizona, there was no negative environmental impact from the violation (since Phoenix is a winter-time oxygenate area, 3.5 wt% ethanol is added, which would bring the toxics reduction to 19.3 %,i.e., above the standard).

c. On May 12, 1998, representatives of EPA conducted an inspection at the Respondent's G Street terminal, located at 4210 G Street, Philadelphia, Pennsylvania which is in an RFG covered area. EPA laboratory analysis showed the premium grade gasoline in the upper 5' of tank #1312 being sold and offered for sale on May 12, 1998 failed to meet the minimum RFG standard of 13.1 % for VOC emissions performance reduction specified in 40 C.F.R. § 80.41, in that it had a VOC emissions performance reduction of

5.2 %. EPA has determined that this constitutes a violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a) and that Respondent, as the distributor of the gasoline, is liable for this violation. With EPA approval, Respondent implemented procedures to prevent the sale of the upper 10' of gasoline until September 15, 1998, so there was no environmental harm from this violation.

d. On August 12, 1998, an RFG survey inspection was conducted at Union Hill Tiger Mart retail gasoline facility, located in Denville, New Jersey, which is in an RFG covered area. EPA laboratory analysis showed the premium grade gasoline being sold and offered for sale as RFG on August 12, 1998 failed to meet the minimum RFG standard of 13.1 % for VOC emissions performance reduction specified in 40 C.F.R. § 80.41, in that it had a VOC emissions performance reduction of 10.1 %. Further investigation of this violation showed that (1) the product delivered to this retail outlet came from Respondent's Batch 980385 (4,211,592 gallons), which failed to meet the VOC emission reduction standard. EPA has determined that this constitutes an additional violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a) and that Respondent, as the refiner who produced this gasoline, is liable for these violations.

e. On July 14, 1999, a reformulated gasoline (RFG) survey inspection was conducted at Hasbrouck Heights Exxon located at 468 Route 17 North, Hasbrouck Heights, New Jersey,

which is in an RFG covered area. EPA laboratory analysis showed the premium gasoline being sold and offered for sale as RFG on July 14, 1999 failed to meet the minimum RFG standard of 13.1 % for VOC emissions performance reduction specified in 40 C.F.R. § 80.41 in that it had a VOC emissions performance reduction of 10.89 %. EPA investigation of this violation showed that all product delivered to this retail outlet came from Tank 223 at Respondent's Linden, New Jersey terminal, and that from May 27, 1999 through July 14, 1999, Respondent's vapor recovery unit was being routed to Tank 223, which caused the gasoline to fail to meet the applicable VOC emission reduction standard. EPA has determined that this constitutes a violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a)and that Respondent, as the distributor who supplied this gasoline, is liable for this violation.

f. On November 15-17, 1999, representatives of EPA conducted an audit at Respondent Refining Company's Trainer, Pennsylvania Refinery and found laboratory test procedures which were not in accordance with the methods specified in § 80.46: (1) Aromatics and Olefins - ASTM D 1319, (2) Sulfur - ASTM D 2622, (3)Oxygen - GC-OFID (40 C.F.R. § 80.46(g)) and (4) RVP - EPA Method 3. EPA has determined that this constitutes four violations of § 80.65(f)and that Respondent, as the owner/operator of this refinery is liable for these violations.

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

7. After considering the gravity of the violations alleged in the September 8, 2000 NOV, the economic benefit or savings (if any) resulting from the violations, the size of Respondent's business, Respondent's history of compliance with the fuels regulations, Respondent's assertions of compliance in Respondent's reply to the NOV, other facts presented by Respondent and Respondent's actions to remedy the violation, EPA has determined to conditionally remit and mitigate the proposed civil penalty to One Hundred and Five Thousand Dollars ($105,000) pending successful completion of the terms of this Agreement. As a means of resolving the allegations contained in the September 8, 2000 NOV, Respondent agrees to pay One Hundred and Five Thousand Dollars ($105,000) within thirty days of receipt of a signed settlement agreement from EPA.

In accordance with section 3717 of the Debt Collection Act of 1982, 31 U.S.C. § 3717, if the debt is not paid within thirty days following the due date, interest will accrue from the due date through the date of actual payment. Interest will be computed in accordance with section 3717(a) of the Debt Collection Act. A late payment handling charge of $20.00 will also be imposed if the amount due is not paid by the due date, with an additional charge of $10.00 for each thirty-day period.

The Respondent agrees to pay the amount due by cashier's check or certified check 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
ATTN: AED/MSEB - 5093

A copy of the check shall be forwarded simultaneously to:

Angela E. Fitzgerald (2242A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

8. With respect to Respondent's Trainer Pennsylvania refinery Laboratory, Respondent further agrees, at any time(s) during the next five years, upon EPA's request, to submit to EPA (1) the laboratory's quality control charts for benzene, oxygenates and vapor pressure (these 30-day summaries must include copies of the original laboratory data), (2) submit all results from all round-robin samples analyzed during a three-month period immediately prior to EPA's requests (round-robin reported values and the reported variability must be included), and (3) final reports on the last three consecutive batches of gasoline (both RFG and conventional gasoline blends. For the last three consecutive batches referenced in 8(3), the following must be included: all certificates of analysis for online analyzers calibration samples, grab samples, final samples, any outside inspections, if done, and data from the online analyzer. The data for the last three consecutive batches to be submitted

for the online analyzers will include only data taken over the immediately preceding 8 days, except for data from the online analyzer when the grab samples were taken whose data is recorded by hand on the blend reports. It is recognized by the parties that since the issuance of the NOV, the Trainer laboratory has made good progress in improving its practices. The reports and data specified in this paragraph are to enable EPA to determine Trainer's continued maintenance of good laboratory practice. The lack of any particular required piece of information will not trigger a default condition unless it represents a material breach of this Agreement.

9. Timely performance is essential to this Agreement. Upon failure to timely perform pursuant to paragraph 8 of this Agreement, or upon default of or failure to comply with any terms of this Agreement by the Respondent, the parties agree that upon such default or failure to comply,

a. The original amount of One Hundred Eighty Three Thousand Dollars ($183,000), less any amount that has been paid, becomes due and owing, and

b. 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 § 211 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.

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

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

12. The 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.

13. The terms of this Agreement are contractual and are not mere recitals. 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.

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

15. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of the EPA to proceed against the Respondent in the event of default or noncompliance with this Agreement; for violations of § 211 of the Act, 42 U.S.C. § 7545, which are not the subject matter of this Agreement; or for other violations of law.

The following agree to the terms of this Agreement:

Tosco Corporation

By: Thomas Dunlay Date: 12/03/01

United States
Environmental Protection Agency

By: Richard Biondi /C Date: 12/31/01
Bruce C. Buckheit, Director
Air Enforcement Division.