

UNITED STATES
U.S. ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.

In the Matter of:)	
)	
TOWN OF BROOKHAVEN, NY)	File No. MSEB - 4671
)	
Respondent)	Settlement Agreement

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereinafter "EPA") and the Town of Brookhaven, N.Y. ("Respondent").

Preliminary Statement

1. On September 30, 1996 a Notice of Violation was issued to Respondent, alleging that Respondent violated §211(k) of the Clean Air Act, 42 U.S.C. § 7545(k), and the regulations promulgated thereunder. The Notice stated that the Town of Brookhaven Highway Yard #3, a gasoline wholesale purchaser-consumer facility, located at 91 Miller Yaphank Road, Miller Place, was inspected on June 3, 1996, and was found to have dispensed and stored gasoline which failed to meet the Reid Vapor Pressure (RVP) standard of 40 C.F.R. §80.41, in violation of 40 C.F.R. §80.78(a)(1).

2. Pursuant to § 211(d)(1), 42 U.S.C. § 7545(d)(1), violators of the regulations implementing § 211(k) of the Act may be liable for a civil penalty of not more than \$25,000 for every day of such violation plus the amount of economic benefit or savings resulting from the violation.

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 settlement of this matter is in the public interest, and that this Agreement is the most appropriate means of resolving the matter.

5. 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 gasoline wholesale purchaser-consumer facility within the meaning of 40 C.F.R. § 80.2(o).
- b. As a result of an EPA investigation of the RVP of gasolines, EPA determined that the gasoline in tank #1 at the Miller Place Yard (Highway Yard #3) had a Reid vapor pressure ("RVP") of 10.13 pounds per square inch (p.s.i.) and gasoline in tank #2 had a Reid vapor pressure of 10.71 p.s.i., in excess of the 8.3 p.s.i. standard applicable in Suffolk County, NY, during the month of June. EPA^{alleges that} this constitutes a violation of 40 CFR § 80.78. Respondent does not admit or deny these facts or that a violation occurred.
- c. Respondent has improved its reformulated gasoline compliance program to ensure compliance with the requirements for the summer season beginning on June 1, 1997.

d. Jurisdiction to settle this matter exists pursuant to § 203 of the Act, 42 U.S.C. § 7522, and other provisions of law.

6. After considering the gravity of the alleged violations, Respondent's history of compliance with § 7545(h) of the Act, the circumstances of this case, the terms of this Agreement, and other facts presented by Respondent, EPA has determined to conditionally reduce the proposed civil penalty to nine thousand eight hundred forty one dollars pending successful completion of the terms of this Agreement. Accordingly:

a. Respondent agrees to pay nine thousand eight hundred forty one dollars (\$9,841).

b. The due date for payment shall be thirty (30) days from the date Respondent's attorney receives a fully-executed copy of this Agreement. As noted in paragraph seven below, time is of the essence.

c. In accordance with §3717 of the Debt Collection Act of 1982, 31 U.S.C. § 3717, if the debt is not entirely paid within thirty (30) 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 Twenty Dollars (\$20) will also be imposed if the amount due is not paid within one month of the due date, with an additional charge of Ten Dollars (\$10) for each additional thirty (30) day period.

d. Respondent agrees to pay this amount by cashier's or certified check payable to the "Treasurer - United States of America" and mailed to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 306277M
Pittsburgh, Pennsylvania 15251
Attention: MSEB - 4671

Copies of this check shall be forwarded by Postal Service certified mail (call for address used for other delivery services) to David E. Alexander at the following address:

David E. Alexander
Mobile Source Enforcement Branch
U.S. Environmental Protection Agency
401 M Street, S.W. (Mailcode 2242-A)
Washington, D.C. 20460

7. **Time is of the essence to this Agreement.** If Respondent does not pay the amount specified in paragraph 6(a), OR if respondent pays the amount specified in paragraph 6(a) more than thirty (30) days after the date specified in paragraph 6(b) or upon Respondent's default or failure to comply with any other term of this Settlement Agreement, the statutory penalty of Twenty five thousand dollars (\$25,000) ("The New Debt Amount") shall be immediately due and owed as a debt. The interest charges and other penalties and fees specified in paragraph 6(c) shall be applied to the new debt amount starting on the date specified in paragraph 6(b) and will continue to accrue until the New Debt Amount is paid in full. The parties agree that upon such default or failure to comply, EPA, at its sole discretion, may commence an action to enforce this Settlement Agreement for the New Debt Amount or may proceed in an action based on the original claim of

violations of section 211 of the Act, 42 U.S.C. § 7545 and seek \$25,000 per day per violation plus economic benefit, and EPA may pursue any other remedies available to it. Respondent expressly waives its right to assert that any action under this paragraph is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.

8. This Agreement becomes effective on the date accepted by EPA. Notwithstanding the forgoing Respondent irrevocably waives the right to renounce this agreement from the date of Respondent's signature until the date 90 days after the duly signed agreement is actually received by the Air Enforcement Division at EPA. EPA will indicate acceptance of the agreement by execution of same, after which a copy of the executed agreement will be forwarded to Respondent's attorney.

9. 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, its officer, agents, directors, owners, heirs, assigns and successors.

10. Subject to the provisions of paragraph 7, above, 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.

11. 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.

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

13. Upon timely payment of the amount specified in 6(a) this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent for violations of section 211(k) of the Clean Air Act, 42 U.S.C. §7545(k), which are not the subject matter of this Agreement, or for any other violations of law.

The following agree to the terms of this Agreement:

Town of Brookhaven, N.Y.

By Emily Pines

Date: 5/19/97

Printed Name: EMILY PINES

Printed Title: TOWN ATTORNEY

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By Bruce Buckheit

Date: 6/25/97

Bruce Buckheit, Director
Air Enforcement Division