

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

In the Matter of: Wescourt Group, Inc. <p style="text-align: center;">Respondent.</p>)))))))	SETTLEMENT AGREEMENT AED/MSEB - 6032
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THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Wescourt Group, Inc. ("Wescourt") 1131 North 21 Street, Grand Junction, Colorado 81501 (hereafter "Respondent" or "Wescourt").

Preliminary Statement

1. On June 14, 2001, a Notice of Violation ("Notice") was issued to Respondent for violation of § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the anti-dumping regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). See Attachment 1. The EPA fuels regulations require reformulated and conventional gasoline to meet certain emission standards and impose on refiners a number of quality assurance, recordkeeping, and reporting requirements. Violators of this law 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.
2. After considering the gravity of the alleged violations, Respondent's history of compliance with the regulations, and the size of Respondent's business, EPA proposed in the Notice a civil penalty of \$110,000 (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 violations or that any violations have 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 refiner as defined within the meaning of 40 C.F.R. § 80.2.
 - b. During August 17-20, 1998, EPA audited Respondent to determine compliance with § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the fuels regulations issued thereunder at 40 C.F.R. Part 80.
 - c. As a result of EPA's audit of Wescourt, EPA alleged that Wescourt sold or supplied in May 1997 four (4) batches of gasoline whose Reid vapor pressure exceeded the 9.0 standard.
 - d. During negotiations, Wescourt proffered that one of the batches contained approximately 10% ethanol and was in compliance with the 10.0 psi standard. EPA therefore dropped one of the alleged violations and reduced the proposed penalty to \$82,500.
 - e. Jurisdiction to settle this matter exists pursuant to § 211 of the Clean Air Act, 42 U.S.C. § 7545, 40 C.F.R. Part 80, and other provisions of law.
7. After considering the gravity of the alleged violations, Respondent's history of compliance with the regulations, the economic benefit or savings resulting from the violations, Respondent's size of business, and actions taken to remedy the violations, EPA has determined to mitigate the civil penalty to \$66,000 subject to successful completion of the terms of this Agreement.

Respondent agrees to pay \$66,000 to the United States of America in four (4) consecutive quarterly payments of \$16,500 each. The first payment shall be due 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 - 6032

A photocopy of each 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 - 6032

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 \$66,000. 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.
 - a. EPA agrees to provide a written notice to Respondent before finding Respondent in default of this Agreement. EPA agrees to send the notice by certified mail, return receipt requested. Respondent shall have five (5) business days to receive the notice in the mail. Thereafter, Respondent shall have ten (10) business days to make all payments or cure the default. The notice shall be sent to Respondent at its last known business address.
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:

Wescourt Group, Inc.

by: *Quin L Morris*

Date: 9-10-01

United States
Environmental Protection Agency

by: *Richard Burch/E*

Date: 10-9-01

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

ATTACHMENT 1



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

June 14, 2001

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Edwin Morris, Vice President of Refining and Marketing
Wescourt Group, Inc.
1493 Highway 6 & 50
Fruita, Colorado 81521

Re: File No. AED/MSEB - 6032
Notice of Violation of the Clean Air Act

Dear Mr. Morris:

During August 17 - 20, 1998, authorized representatives of the United States Environmental Protection Agency ("EPA") audited Wescourt Group, Inc. ("Westcourt"), located at 1493 Highway 6 & 50, Fruita, Colorado. The audit was conducted to determine compliance with § 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).

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.

As a result of the audit, EPA has determined that Wescourt sold or supplied in May 1997 four batches of gasoline whose Reid vapor pressure ("RVP") exceeded the 9.0 psi standard. See Enclosure. Where a violation of the volatility standard is detected at a refinery, the refiner shall be deemed in violation. Therefore, Wescourt is liable for violation of 40 C.F.R. § 80.27 based on 40 C.F.R. § 80.28(a).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize EPA to assess a civil penalty of up to \$27,500 per day for each such violation plus the economic benefit or savings resulting from the violation. In determining the appropriate penalty for a violation such as this 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 Act, actions taken by you to remedy the violation and prevent future violations, the effect of the penalty on your ability to

continue in business and other matters as justice may require. Based on these factors, we propose a civil penalty of \$110,000 for the violations alleged in this Notice.

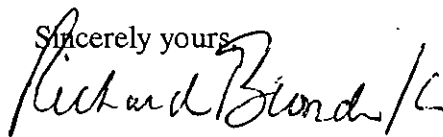
We encourage early settlement of matters such as this. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violation is corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court.

Please contact the EPA attorney designated below regarding this Notice:

Jocelyn L. Adair, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch (2242-A)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Phone number: (202) 564-1011

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

A handwritten signature in cursive script that reads "Bruce C. Buckheit".

Bruce C. Buckheit, Director
Air Enforcement Division

Enclosure

Corrected 8/16/01

**Enclosure
Wescourt RVP Violations**

	BATCH #	DATE	RVP	VOLUME Gallons
1	4081-07549-97-000013	5/1/97	9.17	2,193,492
2	4081-07549-97-000014	5/1/97	9.21	404,292
3	4081-07545-97-000014	5/1/97	9.49	556,794