

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

In the Matter of:)
Sunoco, Inc. (R & M))
Respondent.)
_____)

SETTLEMENT AGREEMENT
AED/MSEB No. 7067

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Sunoco, Inc (R&M), 1735 Market Street Ste LL, Philadelphia, Pennsylvania 19103-7583 ("Sunoco" or "Respondent").

Preliminary Statement

1. On January 13, 2005, EPA issued a Notice of Violation (NOV) to Sunoco Company, Inc. alleging that Sunoco Company, Inc. violated section 211 of the Clean Air Act (CAA), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80 (Fuels Regulations). The Fuels Regulations require conventional gasoline to meet certain emission standards and impose a number of quality assurance, recordkeeping, and reporting requirements on refiners.
2. After considering the gravity of the violations, Respondent's history of compliance with the Fuels Regulations, and the size of Respondent's business, EPA proposed in the NOV a civil penalty of \$106,250.

3. On June 1, 2005, Sunoco self-reported a potential violation at the Eagle Point refinery in Westville, New Jersey on April 27 and 28, 2005, concerning a batch of 83RBOB from Tank 52.
4. The parties, desiring to settle and resolve this matter, in consideration of the mutual covenants and agreements contained herein, which consideration if acknowledged by the parties to be adequate, agree as set forth herein.

Terms of Agreement

5. The parties stipulate and agree as set forth in this Paragraph 5. It is further agreed that these stipulations are applicable to this settlement agreement (Agreement) and any enforcement or penalty arising out of this Agreement or the subject matter of this Agreement:
 - a. Jurisdiction to settle this matter exists pursuant to section 211 of the CAA, 42 U.S.C. § 7545, 40 C.F.R. Part 80 and other provisions of law;
 - b. At all relevant times, Respondent was a refiner within the meaning of 40 C.F.R. § 80.2(i).
 - c. For purposes of this matter only, Respondent admits to the provisions of Paragraphs 5.a and 5.b above.
 - d. Except as set forth in Paragraph 5.c above, Respondent neither admits nor denies the specific factual allegations of EPA contained in this Agreement and Respondent does not admit or deny EPA's legal conclusions in this Agreement, but for purposes of this matter only, expressly waives any of its rights to contest said allegations and conclusions.

e. EPA alleged in the January 13, 2005, NOV that Respondent's parent corporation violated:

1. 40 C.F.R. § 80.27(a)(2)(i) by selling, offering to sell, supplying or introducing into commerce gasoline with an RVP that exceeded 9.0 psi that was produced and sold on or about May 6, 2000 (Batch numbers 596 and 599);

2. 40 C.F.R. § 80.27(a)(2)(i) by selling, offering to sell, supplying or introducing into commerce gasoline with an RVP that exceeded 9.0 psi that was produced and sold on or about May 1 - May 24, 2004, in Tulsa, Oklahoma (self-reported); and

3. 40 C.F.R. § 80.65(e) by incorrectly reporting test results to EPA multiple times during 2001.

f. Respondent has:

1. Advised EPA that internal Operating Procedures pertaining to issuance of a Certificate of Analysis prior to release of gasoline for sale was not followed by one of Respondent's employees in 2000 with regard to Batch numbers 596 and 599 and that employee is no longer employed by Respondent;

2. Implemented corrective action at the Tulsa facility, including an additional verification step that is designed to ensure that daily operating instructions are completed as part of procedures to avoid introducing into commerce gasoline with an RVP that exceeds regulatory limits; and

3. Submitted corrected reports to EPA for the alleged reporting violations from 2001.

g. Respondent has asserted that the self-reported violation at Eagle Point was noted as a result of a shutdown by Harbor Pipeline late on April 27, 2005. The shutdown was triggered by an observed significant gravity change. Sunoco received notice of the shutdown on April 28, 2005. This data raised homogeneity concerns for Sunoco relative to 83RBOB, which was in the process of transfer. However, Respondent further asserts, and EPA accepts, that the entire volume of 83RBOB (1,806,000 gallons) was downgraded to conventional, isolated from other product and returned to Eagle Point refinery on May 5th, with the result that none of the 83RBOB made its way into commerce to any end-users.

6. After considering the gravity of the violations, Respondent's history of compliance with the Fuels Regulations, the terms of this Agreement, and other facts presented by the Respondent, EPA has determined that settlement of this matter is in the public interest and that this Agreement is the most appropriate means of resolving the matter. EPA has determined to remit and mitigate the civil penalty for the violations identified in the January 13, 2005, NOV to \$80,000 (the "Civil Penalty"), upon payment by Respondent of the Civil Penalty. Respondent agrees to pay \$80,000 to the United States of America within sixty days from the date that a copy of this Agreement executed by EPA is received by Respondent (due date). The civil penalty shall be considered paid on the date that Respondent mails the check by U. S. mail (as evidenced by certified mail return

receipt) and shall be paid by check made payable to the "United States of America," and the payment shall be mailed to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn.: AED/MSEB - 7067

A photocopy of the check shall be telefaxed simultaneously to:

Angela Fitzgerald, Attorney
U.S. Environmental Protection Agency
202/564-0015

7. Pursuant to 31 U.S.C. §3717 and 40 C.F.R. §13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States, as well as a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make payment of the Civil Penalty on or before the due date or to comply with the conditions in this Agreement regarding payment shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.
8. EPA may, in its unreviewable discretion, reduce or waive stipulated penalties otherwise due EPA under this Agreement.
9. Time is of the essence to this Agreement. Respondent agrees to pay the following stipulated penalties for failure to timely pay the penalty, or provide proof thereof, pursuant to paragraph 5, \$500 per day.

10. The parties further agree that if Respondent fails to pay the Civil Penalty by the due date, EPA may refer this matter to the United States Attorney General for collection pursuant to section 211(d) of the CAA, 42 U.S.C. § 7545(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to section 211 of the CAA; 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 allegations set forth herein, and Respondent expressly waives its right to assert that any action based upon the allegations set forth herein is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.
11. This Agreement becomes effective upon the date signed by the EPA, after which time a copy will be forwarded to the Respondent, as follows:

Duane A. Hall
Manager Quality Assurance
Sunoco, Inc. (R&M)
Marcus Hook Refinery
LSC Building/100 Green Street
Marcus Hook, PA 19061

With a copy to: Edward J. Ciechon
Chief Counsel Environmental
Sunoco, Inc. (R&M)
1735 Market Street Ste LL
Philadelphia, PA 19103-7583

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

13. The NOV was issued to Sunoco Company, Inc., now Sunoco, Inc. As the subsidiary to Sunoco, Inc. which operates Sunoco Inc.'s petroleum refining and marketing business, this agreement is between EPA and Sunoco, Inc. (R & M).
14. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to this matter.
15. 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.
16. The validity, enforceability and construction of this Agreement shall be determined in accordance with applicable federal law.
17. The effect of the settlement herein is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA regarding this matter, as memorialized in the emails, correspondence and laboratory results that Respondent provided to EPA from January 25, 2005, through May 11, 2005 regarding this matter.
18. 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 section 211 of the CAA, 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:

Sunoco, Inc. (R&M)

by: Michael J. Hennigan
Michael J. Hennigan
Vice President Product Trading, Sales & Supply

Date: 7/14/05

Administrative Settlement Agreement *In the Matter of: Sunoco, Inc. (R&M)*

United States Environmental Protection Agency

by: 

Date: July 28, 2005

Adam M. Kushner
Acting Director,
Air Enforcement Division
Office of Enforcement and Compliance Assurance