

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

In the Matter of:)
)
Tire Rama)
)
Respondent.)
_____)

SETTLEMENT AGREEMENT
AED/MSEB No. EF-2006-7176

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Tire Rama (Respondent), which is located at 103 Main St. Rudyard, MT 59540.

Preliminary Statement

1. On January 4, 2007, EPA issued a Notice of Violation File No. AED/MSED EF-2006-7176 (NOV) to Respondent alleging that Respondent violated Section 211 of the Clean Air Act (CAA), 42 U.S.C. § 7545, and the Motor Vehicle Diesel Fuel regulations at 40 C.F.R. Part 80, Subpart I, which require retailers and wholesale purchaser consumers to satisfy various requirements, including specific diesel pump labeling requirements.
2. The NOV alleged that on November 6, 2006, Respondent operated a retail outlet located at 103 Main St. Rudyard, MT 59540, and, as a consequence, that Respondent was the retailer of this retail outlet within the meaning of 40 C.F.R. § 80.2(k). The NOV further alleged that Respondent violated 40 C.F.R. § 80.570(b) by selling or dispensing, or offering for sale or dispensing, motor vehicle diesel fuel subject to the 500 ppm sulfur

standard of 40 C.F.R. § 80.570(c) from a pump stand on which the following required label was not prominently and conspicuously displayed:

LOW SULFUR HIGHWAY DIESEL FUEL
(500 ppm Sulfur Maximum)

WARNING

Federal law *prohibits* use in model year 2007 and later highway vehicles and engines.
Its use may damage these vehicles and engines.

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.
4. By entering into this Agreement, Respondent does not admit that it is responsible for the alleged violations or that any violations have occurred.

Terms of Agreement

5. The parties stipulate and agree to the matters identified in this Paragraph. 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. 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;
 - b. 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;

- c. At all relevant times, Respondent was a retailer within the meaning of 40 C.F.R. § 80.2(k).
 - d. The Agreement resolves, as to the Respondent, the violations alleged in EPA's January 04, 2007, NOV identified in Paragraph 1 of this Agreement.
6. Respondent asserts herein that it has corrected its practices to address the conditions that created the alleged violations and to prevent their future occurrence by applying the proper pump labels to all diesel pumps at its retail stations.
7. Under this Agreement, Respondent agrees to pay a civil penalty of \$500 to the United States of America by no later than thirty days from the effective date of this Agreement. Late payment of the civil penalty is subject to interest pursuant to Paragraph 8 and stipulated penalties pursuant to Paragraph 10 of this Agreement. The civil penalty 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

A photocopy of the check shall be telefaxed or mailed simultaneously to:

David W. Schnare, Esq. Ph.D., Attorney-Advisor
U.S. Environmental Protection Agency (2242A)
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20004
(202) 564-0015 (fax)

8. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will begin to accrue the day after the civil penalty agreed to herein is due. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue: Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 (a)(1). Interest will be assessed at the rate of the United States Treasury tax and loan account rate in accordance with 40 C.F.R. 13.11(a).
9. Under 28 U.S.C. § 162(f), penalties paid pursuant to this Agreement are not deductible for federal tax purposes.
10. Respondent agrees to pay stipulated penalties of \$100 per day for failure to timely pay the penalty, or provide proof thereof, pursuant to Paragraph 7.
11. The parties further agree that upon default or failure to comply with Paragraphs 7 and/or 10, EPA may refer this matter to the United States Department of Justice 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.
12. 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.
13. Respondent specifically agrees that in the event of such default or failure to comply with this Agreement, 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

The following agree to the terms of this Agreement:

Tire Rama

By: Toner Tire Rama
Robert T. Toner
(name)

1-18-07
Date

Owner/Mgr
(title)

**Administrative Settlement Agreement
In the Matter of Tire Rama
AED/MSEB # EF-2006-7176**

United States Environmental Protection Agency

By: Adam M. Kushner
Adam M. Kushner
Director
Air Enforcement Division
Office of Civil Enforcement

Date: January 31, 2007