

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C.

_____)	
In the matter of:)	
)	
MORGAN STANLEY CAPITAL)	
GROUP, INC.)	File No. MSEB/AED - 6082
)	
)	SETTLEMENT AGREEMENT
Respondent.)	
_____)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Morgan Stanley Capital Group Inc., located at 1585 Broadway, New York, New York 10036 (Respondent).

Preliminary Statement

1. On May 24, 2001, the Respondent provided written notification to EPA that it had inadvertently failed to comply with the reporting requirements of the reformulated gasoline (RFG) regulations (40 CFR Part 80, subparts D and F). Specifically, Respondent self-reported that it did not timely file its calendar year 2000 third and fourth quarter RFG reports under § 80.75, and its year 2000 attest report under § 80.125. Respondent immediately took corrective actions and subsequently filed all required year 2000 RFG reports and its year 2000 attest report.

Respondent also requested application of EPA's policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations" (65 F.R. 19618, April 11,

2000) ("Audit Policy") and submitted information to demonstrate its eligibility for application of the Audit Policy.

2. On August 14, 2002, 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 CFR Part 80. Specifically, the NOV alleged that, as Respondent had reported to EPA, Respondent failed to comply with 40 CFR § 80.75 and 80.125 by failing to file its third and fourth quarterly reports, and the attest report, in a timely manner.

EPA's Audit Policy Determination

3. EPA issued the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties. However, EPA retains its discretion to recover any economic benefit gained as a result of non-compliance.

4. Where the disclosing party establishes that it satisfies all of the following conditions set forth in the Audit Policy, EPA will not seek gravity-based penalties for violations of federal environmental requirements: 1. the violations were discovered through a systematic environmental management program; 2. the violations were voluntarily discovered; 3. the violations were promptly disclosed; 4. discovery and disclosure of the violations were independent of prior actions of the government or third party plaintiff; 5. the violations were corrected and the environmental harm was remedied; 6. steps were taken to prevent recurrence; 7. the violations were not repeat violations; 8. the violations did not include specific serious violations excluded under the Audit Policy; and 9. the violator has cooperated with EPA.

5. Where the disclosing party establishes that it satisfies all of the conditions listed above with the exception of establishing that the violations were found through a systematic environmental management program, EPA will reduce gravity-based penalties for the violation(s) by 75%.

6. EPA has concluded that Respondent has satisfied all the above conditions except the element of systematic discovery. Under the Audit Policy, EPA has determined that Respondent is eligible for a 75% reduction of the gravity portion of the penalty. After application of the Audit Policy, EPA has determined to conditionally remit and mitigate the civil penalty for these violations to Seven Thousand Five Hundred dollars (\$7,500).

Terms of Agreement

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.

7. The parties agree that, without admitting or denying the propriety of the NOV, the settlement of this matter is in the public interest and that this Agreement is the most appropriate means of resolving the matter.

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

9. The Respondent agrees to pay Seven Thousand Five Hundred dollars (\$7,500.00) within thirty days of receipt of the signed Settlement Agreement from the EPA ("penalty due date"). Late payment of this civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717."

10. The Respondent agrees to pay the Seven Thousand Five Hundred dollars (\$7,500.00) penalty required by paragraph 9 of this Agreement by cashier's check or certified check, with the notation "AED/MSEB - 6082" payable to the "United States of America". The penalty is to be mailed to the following address:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 306277M
Pittsburgh, Pennsylvania 15251
Attention: AED/MSEB - 6082

A copy of the penalty check shall be simultaneously forwarded to Erv Pickell at the following address:

Erv Pickell, Attorney/Advisor
U.S. Environmental Protection Agency
12345 West Alameda Parkway
Suite 214
Denver, CO 80228

11. Time is of the essence to this Agreement. Upon the Respondent's failure to timely pay pursuant to paragraph 10 of this Agreement, the parties agree that the following remedies become available to the EPA:

a. EPA may commence an action to enforce this Agreement.

b. In the event of such default or failure to comply, EPA may pursue any other legal remedies available to it. This includes proceeding in an action based on the original claim of violations of § 211 of the Act, 42 U.S.C. § 7545, and the 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.

c. Further, if the Respondent fails to pay the Seven Thousand Five Hundred dollars (\$7,500.00) penalty required by paragraph 10 within ninety days of the penalty due date, the parties agree that the Respondent owes a stipulated penalty to the EPA of Fifteen Thousand dollars (\$15,000.00) ("stipulated penalty"). Once the stipulated penalty becomes due, EPA may bring an action against the Respondent to recover the stipulated penalty.

12. Consistent with the purposes of the Audit Policy, the Respondent agrees, on a continuing and company-wide basis, to continue for a period of three years from the effective date of this Agreement corrective actions substantially similar to those outlined in the Audit Policy submission in order to prevent recurrence of violations of the RFG regulations.

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

14. The parties hereby represent that the individual(s) executing this Agreement on behalf of the respective party are authorized to do so and that such execution intended and is sufficient to bind the party and, when applicable, its officers, agents, directors, owners, heirs, assigns, and successors.

15. 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.

16. The terms of this Settlement Agreement and Audit Policy Determination shall be the complete settlement of all civil administrative claims and causes of action for the allegations contained in the NOV referred to in paragraph 2, above. Respondent's full completion of the terms of this Agreement shall terminate this matter.

17. 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 Clean Air Act, 42 U.S.C. § 7545, which are not the subject matter of this Agreement; or for other violations of law.

18. 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.

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

The following agree to the terms of this Agreement:

Morgan Stanley Capital Group, Inc.

by: 

Date: 10/28/02

JOHN SHAPIRO
VICE PRESIDENT
(Name and Title)

Morgan Stanley Capital Group, Inc.

United States

Environmental Protection Agency

by: 

Date: 12/16/02

Bruce C. Buckheit

Director, Air Enforcement Division

Office of Enforcement and Compliance Assurance