

U.S. ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C.

In the Matter of:)	AED/MSEB No. 4597
AGE REFINING, INC., a Texas corporation,)	SETTLEMENT AGREEMENT ^c
Respondent.)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereinafter "EPA") and Age Refining, Inc., a Texas Corporation, located at 7811 South Presa, San Antonio, Texas, (hereinafter referred to as "Respondent").

Preliminary Statement

1. On March 20, 1996, a Notice of Violations, AED/MSEB No. 4597, was issued to Respondent stating that Respondent violated section 211 of the Clean Air Act ("the CAA"), 42 U.S.C. § 7545 and the regulations issued thereunder at 40 C.F.R. Part 80. The Notice proposed a civil penalty of Sixty-nine Thousand Dollars (\$69,000).
2. Respondent denies the allegations of the Notice of Violations.
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 is the most appropriate means of resolving the matter.

5. The parties stipulate and agree to the following matters. It is further agreed that these stipulations are applicable to this Settlement Agreement and any proceeding arising out of this Settlement Agreement or the subject matter of this Settlement Agreement.

a. Respondent is a person as defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e).

b. Respondent is a "refiner" as defined in 40 C.F.R. § 80.2(i).

c. Respondent is a "distributor" as defined in 40 C.F.R. § 80.2(l).

d. On each of the eleven occasions set forth in Attachment A, Respondent introduced or caused or allowed the introduction into a motor vehicle of diesel fuel which Respondent knew or should have known contained a concentration of sulfur in excess of 0.05 percent (by weight). This constitutes eleven separate violations of section 211(g)(2) of the CAA, 42 U.S.C. § 7545(g)(2).

e. Respondent, as a person who introduced or caused or allowed the introduction of the illegal diesel fuel into the motor vehicles, is liable for the violations described in Subparagraph 5d of this Settlement Agreement, pursuant to section 211(g)(2) of the CAA, 42 U.S.C. § 7545(g)(2).

f. On the twelve occasions set forth in Attachment B, Respondent was manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% (by weight). This constitutes twelve separate violations of 40 C.F.R. § 80.29(a).

g. Respondent, as a refiner and/or distributor which manufactured, introduced into commerce, sold, offered for sale, supplied, dispensed, offered for supply, or transported the diesel fuel that was in violation of 40 C.F.R. § 80.29(a) as set forth in Paragraph 5f of this Settlement Agreement, is liable for the violations pursuant to 40 C.F.R. § 80.30(f).

h. Jurisdiction to settle this matter exists pursuant to section 211 of the CAA, 42 U.S.C. § 7545 and other provisions of law.

8. After considering the gravity of the violation, the economic benefit or savings resulting from the violation, the size of Respondent's business, the Respondent's history of

compliance, actions taken by Respondent to remedy the violations, the effect of the penalty on Respondent's ability to continue in business, the terms of this Settlement Agreement and other facts presented by Respondent, EPA has agreed to conditionally remit and mitigate the civil penalty to Forty-one Thousand Four Hundred Dollars (\$41,400), pending successful completion of the terms of this Settlement Agreement. The civil penalty amount of Forty-one Thousand Four Hundred Dollars (\$41,400) together with interest at the rate of Six Percent (6%) per annum shall be payable in twenty-four monthly installments as set forth in the payment schedule below, with the first such installment due on or before 60 days after the date of execution of this Settlement Agreement (the date this Settlement Agreement is signed by EPA) and each of the remaining twenty-three payments due on the first day of each of the next twenty-three consecutive months:

Payment Schedule

<u>Payment</u>	<u>Total Payment</u>	<u>Interest Portion</u>	<u>Penalty Portion</u>	<u>Balance Civil Penalty</u>
				\$41,400.00
1.	\$1,725.00		\$1,725.00	\$39,675.00
2.	\$1,923.38	\$198.38	\$1,725.00	\$37,950.00
3.	\$1,914.75	\$189.75	\$1,725.00	\$36,225.00
4.	\$1,906.13	\$181.13	\$1,725.00	\$34,500.00
5.	\$1,897.50	\$172.50	\$1,725.00	\$32,775.00
6.	\$1,888.88	\$163.88	\$1,725.00	\$31,050.00
7.	\$1,880.25	\$155.25	\$1,725.00	\$29,325.00
8.	\$1,871.63	\$146.63	\$1,725.00	\$27,600.00
9.	\$1,863.00	\$138.00	\$1,725.00	\$25,875.00
10.	\$1,854.38	\$129.38	\$1,725.00	\$24,150.00
11.	\$1,845.75	\$120.75	\$1,725.00	\$22,425.00
12.	\$1,837.13	\$112.13	\$1,725.00	\$20,700.00
13.	\$1,828.50	\$103.50	\$1,725.00	\$18,975.00
14.	\$1,819.88	\$ 94.88	\$1,725.00	\$17,250.00
15.	\$1,811.25	\$ 86.25	\$1,725.00	\$15,525.00
16.	\$1,802.63	\$ 77.63	\$1,725.00	\$13,800.00
17.	\$1,794.00	\$ 69.00	\$1,725.00	\$12,075.00
18.	\$1,785.38	\$ 60.38	\$1,725.00	\$10,350.00
19.	\$1,776.75	\$ 51.75	\$1,725.00	\$ 8,625.00
20.	\$1,768.13	\$ 43.13	\$1,725.00	\$ 6,900.00
21.	\$1,759.50	\$ 34.50	\$1,725.00	\$ 5,175.00

<u>Payment</u>	<u>Total Payment</u>	<u>Interest Portion</u>	<u>Penalty Portion</u>	<u>Balance</u> <u>Civil Penalty</u>
22.	\$1,750.88	\$ 25.88	\$1,725.00	\$ 3,450.00
23.	\$1,742.25	\$ 17.25	\$1,725.00	\$ 1,725.00
24.	\$1,733.63	\$ 8.63	\$1,725.00	\$ 0.00

In accordance with the Debt Collection Act of 1982, if the civil penalty amounts are not paid within 30 days following the due date for each installment, interest will accrue from the due date at a rate to be furnished each quarter by the EPA Fiscal Policies and Procedures Branch, through the date of actual payment. A late payment handling charge of \$20.00 will also be imposed if the amount is not paid by the due date, with an additional charge of \$10.00 for each subsequent 30 day period. A 6% per annum penalty will be applied on any principal amount not paid within 90 days of the due date. The Respondent agrees that the civil penalty amounts will be paid by cashier's check or certified check payable to the "United States of America" submitted to the EPA Washington Accounting Operations, P.O. Box 360277M, Pittsburgh, Pennsylvania 15251, Attn: AED/MSEB No. 4597 with a copy to Marcia S. Ginley, Attorney for EPA. Each such check shall be identified with the case number 4597 and Respondent's name.

9. The parties agree that the civil penalty set forth in Paragraph 8 of this Settlement Agreement may be prepaid (amounts paid ahead of the schedule set forth in Paragraph 8) by Respondent as follows: If prepayment is to be made it must be in an amount of at least Ten Thousand Dollars (\$10,000). At least 30 days prior to the due date of any payment where prepayment will occur, Respondent shall submit to Marcia S. Ginley, Attorney for EPA, a request to prepay and a proposed payment schedule for the remaining payments based upon the same terms as set forth in Paragraph 8 of this Settlement Agreement modified only to reflect the prepayment. Prepayment shall not be allowed and the modified payment schedule shall not become final until approved, in writing, by EPA.

10. Respondent expressly agrees that the amounts paid under the terms of this Settlement Agreement are not deductible with respect to any federal, state, local or other tax.

11. Time is of the essence to this Settlement Agreement. Upon failure to timely pay or perform pursuant to Paragraph 8 of this Settlement Agreement, or upon default of or failure to comply with any of the terms of this Settlement Agreement by the Respondent, the entire

proposed civil penalty of Sixty-nine Thousand Dollars (\$69,000), shall be immediately due and payable, and the interest charges and other penalties specified in Paragraph 8 shall be applied to this amount effective from the due date and will continue until the debt is paid in full. The parties agree that upon such default or failure to comply, EPA may refer this matter to the United States Attorney General for collection; commence an action to enforce this Settlement Agreement or to recover the civil penalty pursuant to section 211 of the CAA, 42 U.S.C. § 7545; 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 claims of violation of section 211 of the CAA, 42 U.S.C. § 7545 and the regulations at 40 C.F.R. Part 80, 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.

12. The provisions of this Settlement Agreement shall apply to and be binding upon Respondent, its agents, employees, servants, successors, and assigns.

13. Respondent hereby represents that the individual executing this Settlement Agreement is authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, employees, servants, assigns, and successors.

14. The terms of this Settlement Agreement are contractual and not a mere recital. If any provision or provisions of this Settlement Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

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

16. Upon completion of the terms of this Settlement Agreement, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of the EPA to proceed against Respondent in the event of default or noncompliance with this Settlement Agreement; for violations of section 211 of the CAA, 42 U.S.C. § 7545, which are not the subject matter of this

Settlement Agreement; for other violations of law; or with respect to other matters not within the scope of this Settlement Agreement.

The following agree to the terms of this Settlement Agreement:

Respondent:

Age Refining, Inc., a Texas corporation

by: 

Date: August 4, 1997

United States Environmental Protection Agency

by: Bruce C. Buckheit

Date: September 10, 1997

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

ATTACHMENT A
VIOLATIONS OF SECTION 211(g)(2) OF THE
CLEAN AIR ACT, 42 U.S.C. § 7545(g)(2)
BY AGE REFINING, INC.

1. On or about April 19, 1995, Age Refining, Inc. introduced or caused or allowed the introduction into H.E.Butt Grocery Company low sulfur Truck #7765, a motor vehicle, of diesel fuel which Age Refining, Inc. knew or should have known contained a concentration of sulfur in excess of 0.05 percent (by weight). H.E.Butt Grocery Company, a Texas corporation, is located at 4710 N. Pan American Expressway, San Antonio, Texas (hereinafter "H.E.B.").
2. On or about April 19, 1995, Age Refining, Inc. introduced or caused or allowed the introduction into H.E.B. low sulfur Truck #7656, a motor vehicle, of diesel fuel which Age Refining, Inc. knew or should have known contained a concentration of sulfur in excess of 0.05 percent (by weight).
3. On or about April 19, 1995, Age Refining, Inc. introduced or caused or allowed the introduction into H.E.B. low sulfur Truck #7821, a motor vehicle, of diesel fuel which Age Refining, Inc. knew or should have known contained a concentration of sulfur in excess of 0.05 percent (by weight).
4. On or about April 19, 1995, Age Refining, Inc. introduced or caused or allowed the introduction into H.E.B. low sulfur Truck #7624, a motor vehicle, of diesel fuel which Age Refining, Inc. knew or should have known contained a concentration of sulfur in excess of 0.05 percent (by weight).
5. On or about April 19, 1995, Age Refining, Inc. introduced or caused or allowed the introduction into H.E.B. low sulfur Truck #7822, a motor vehicle, of diesel fuel which Age Refining, Inc. knew or should have known contained a concentration of sulfur in excess of 0.05 percent (by weight).
6. On or about April 20, 1995, Age Refining, Inc. introduced or caused or allowed the introduction into Pepsico, Inc. low sulfur Truck #59411, a motor vehicle, of diesel fuel which Age Refining, Inc. knew or should have known contained a concentration of sulfur in excess of 0.05 percent (by weight). Pepsico, Inc., a North Carolina corporation, is located at 6100 N.E. Loop 410, San Antonio, Texas (hereinafter "Pepsico").
7. On or about April 20, 1995, Age Refining, Inc. introduced or caused or allowed the introduction into Pepsico low sulfur Truck #70199, a motor vehicle, of diesel fuel which Age Refining, Inc. knew or should have known contained a concentration of sulfur in excess of 0.05 percent (by weight).

8. On or about April 20, 1995, Age Refining, Inc. introduced or caused or allowed the introduction into Pepsico low sulfur Truck #418249, a motor vehicle, of diesel fuel which Age Refining, Inc. knew or should have known contained a concentration of sulfur in excess of 0.05 percent (by weight).

9. On or about April 20, 1995, Age Refining, Inc. introduced or caused or allowed the introduction into Pepsico low sulfur Truck #18022, a motor vehicle, of diesel fuel which Age Refining, Inc. knew or should have known contained a concentration of sulfur in excess of 0.05 percent (by weight).

10. On or about April 20, 1995, Age Refining, Inc. introduced or caused or allowed the introduction into Central Freight Lines, Inc. low sulfur Truck #7400983, a motor vehicle, of diesel fuel which Age Refining, Inc. knew or should have known contained a concentration of sulfur in excess of 0.05 percent (by weight). Central Freight Lines, Inc., a Texas corporation, is located at 5348 E. Houston, San Antonio, Texas (hereinafter "Central").

11. On or about April 20, 1995, Age Refining, Inc. introduced or caused or allowed the introduction into Central low sulfur Truck #7901463, a motor vehicle, of diesel fuel which Age Refining, Inc. knew or should have known contained a concentration of sulfur in excess of 0.05 percent (by weight).

ATTACHMENT B
VIOLATIONS OF 40 C.F.R. SECTION 80.29(a)
BY AGE REFINING, INC.

1. On or about April 18, 1995, Age Refining, Inc., with respect to Tank 427, a low sulfur diesel fuel storage tank at the Age Refining, Inc. facility located at 7811 S. Presa, San Antonio, Texas, was manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% by weight.

2. On or about April 18, 1995, Age Refining, Inc., with respect to Tank 428, a low sulfur diesel fuel storage tank at the Age Refining, Inc. facility located at 7811 S. Presa, San Antonio, Texas, was manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% by weight.

3. On or about April 18, 1995, Age Refining, Inc., with respect to Tank 429, a low sulfur diesel fuel storage tank at the Age Refining, Inc. facility located at 7811 S. Presa, San Antonio, Texas, was manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% by weight.

4. On or about April 18, 1995, Age Refining, Inc., with respect to Tank 430, a low sulfur diesel fuel storage tank at the Age Refining, Inc. facility located at 7811 S. Presa, San Antonio, Texas, was manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% by weight.

5. On or about April 19, 1995, Age Refining, Inc., with respect to Tank 3, a low sulfur diesel fuel storage tank at the H.E.B. facility located at 4710 N. Pan Am Expressway, San Antonio, Texas, was manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% by weight.

6. On or about April 19, 1995, Age Refining, Inc., with respect to Tank 5, a low sulfur diesel fuel storage tank at the H.E.B. facility located at 4710 N. Pan Am Expressway, San Antonio, Texas, was manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% by weight.

7. On or about April 19, 1995, Age Refining, Inc., with respect to Tank 1, a low sulfur diesel fuel storage tank at the H.E.B. facility located at 4710 N. Pan Am Expressway, San Antonio, Texas, was manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% by weight.

8. On or about April 20, 1995, Age Refining, Inc., with respect to the tank for the pump with serial number 253-435, a low sulfur diesel fuel storage tank at the Pepsico facility located at 6100 N.E. Loop 410, San Antonio, Texas, was manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% by weight.

9. On or about April 20, 1995, Age Refining, Inc., with respect to the tank for the pump with serial number 252-799, a low sulfur diesel fuel storage tank at the Pepsico facility located at 6100 N.E. Loop 410, San Antonio, Texas, was manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% by weight.

10. On or about April 20, 1995, Age Refining, Inc., with respect to the tank for the pump with serial number 012-557117, a low sulfur diesel fuel storage tank at the Central facility located at 5348 E. Houston, San Antonio, Texas, was manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% by weight.

11. On or about April 20, 1995, Age Refining, Inc., with respect to the tank for the pump with serial number 121-556853, a low sulfur diesel fuel storage tank at the Central facility located at 5348 E. Houston, San Antonio, Texas, was manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% by weight.

12. On or about April 18, 1995, Age Refining, Inc., with respect to Tank 4, a low sulfur diesel fuel storage tank at the Saveco Travel Center facility located at 14425 I-10 East, Converse, Texas, was manufacturing, introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply, or transporting for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% by weight.