

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

In the Matter of:)
AL'S AUTO SERVICE)
Respondent.)

SETTLEMENT AGREEMENT

AED/MSEB - 5055

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Al's Auto Service, Mr. Al Martins, Owner, 277 Broadway, Cambridge, MA 02139 ("Respondent").

Preliminary Statement

1. On March 10, 2000, a Notice of Violation ("Notice") was issued to Respondent for a violation of § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(k), and the reformulated gasoline ("RFG") regulations issued thereunder at 40 C.F.R. Part 80, subpart D ("regulations"). EPA regulations require that gasoline sold or used in RFG covered areas must meet the RFG standard for VOC emissions performance reduction specified in 40 C.F.R. § 80.41. This law also provides that no person shall sell, offer for sale, or dispense any gasoline represented as reformulated and intended for sale or use in any covered area unless such gasoline meets the applicable standards specified in 40 C.F.R. § 80.41. The law also subjects violators to a maximum civil penalty of up to \$27,500 per day for each such violation plus the economic benefit or savings

resulting from the violation.

2. After considering the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, Respondent's history of compliance with the Act, the size of Respondent's business, Respondent's actions to remedy the violation and/or to prevent recurrence of further violations, the effect of the penalty on Respondent's ability to continue in business, and such other matters as justice may require, EPA proposed in the Notice a civil penalty of \$1,700 ("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. 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 which arise out of this Agreement or which is the subject matter of this Agreement:
 - a. At all relevant times, Respondent was a retail outlet within the meaning of 40 C.F.R. § 80.2.

- b. On June 16, 1998, a survey inspection was conducted at Respondent's retail outlet located at 277 Broadway, Cambridge, MA 02139. The survey was conducted to determine compliance with section 211(k) of the Act, 42 U.S.C. § 7545(k), and the regulations issued thereunder (40 C.F.R. Part 80, subpart D).
- c. As a result of the survey inspection EPA has determined that the Respondent, an retail outlet located in the VOC-Control Region 2 reformulated gasoline covered area, was selling, dispensing, or offering for sale premium grade reformulated gasoline that failed to meet the minimum VOC emissions performance reduction standard of 13.1 percent. The sample of premium grade gasoline taken from Respondent had a VOC emissions performance reduction of 1.17 percent.
- d. Where the gasoline contained in any storage tank at any retail outlet is found in violation, 40 C.F.R. § 80.79(a)(1) states that the retailer and/or retail outlet shall be deemed in violation. As the retailer who sold, offered for sale, and/or dispensed gasoline which was in the storage tank containing gasoline found to be in violation, Respondent is liable for one (1) violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a)(1).
- e. By entering into this Agreement Respondent makes no admission of fact nor does Respondent admit that it has violated any provisions of law.

f. Jurisdiction to settle this matter exists pursuant to § 211 of the Act, 42 U.S.C. 7545, 40 C.F.R. § 80.20, and other provisions of law.

6. After considering the gravity of the violation, the actual volume of gasoline in violation and Respondent's enhancement of its compliance program, EPA has determined to remit and mitigate the civil penalty to \$1,200 subject to successful completion of the terms of this Agreement.

a. Respondent agrees to pay \$1,200 to the United States of America within sixty (60) days from the date that this Agreement is executed by EPA and returned to Respondent by certified mail return receipt requested ("the due date"). In accordance with the Debt Collection Act of 1982, 31 U.S.C. § 3717, if the debt is not paid within 30 days following the due date, interest will accrue from the due date through the date of actual payment. Interest will be computed in accordance with section 3717(a) of the Debt Collection Act. A late payment handling charge of Twenty (\$20.00) Dollars will also be imposed if the amount is not paid by the due date, with an additional charge of Ten (\$10.00) Dollars for each subsequent 30 day period.

b. 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
Attn.: AED/MSEB - 5055
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251

A photocopy of the check shall be mailed simultaneously to:

David E. Alexander, Attorney (Attn.: AED/MSEB - 5055)
U.S. Environmental Protection Agency
MSEB/AED (2242-A)
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460

- c. Violations of the gasoline quality standards can result if the transition from non-VOC controlled (winter) gasoline to VOC controlled gasoline is incomplete before June 1. In order to prevent violations caused in this manner, Respondent agrees to take the following steps for each of its gasoline storage tanks each year:
- i. Three times between May 1 and May 31 Respondent will reduce the storage tank volume to the minimum practical level and take delivery of VOC controlled gasoline into the storage tank.
 - ii. The total volume of VOC controlled gasoline delivered into the storage tank over the three deliveries must be no less than six times the volume that was in the storage tank prior to the first delivery. For example, if 800 gallons was the volume of gasoline in a storage tank before the first delivery of VOC controlled gasoline, the total volume of VOC controlled gasoline over the three deliveries must be at least 4,800 gallons ($6 \times 800 = 4,800$).
 - iii. Respondent will retain records of the inventories and deliveries at its retail outlet and make such records available to EPA or its authorized representatives upon request.
7. Time is of the essence to this Agreement. Upon failure to perform pursuant to paragraph 7 of this Agreement, Respondent agrees to pay instead the penalty of \$1,700 proposed

in the notice of violation instead of the amount agreed to in paragraph 6. 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 Act, 42 U.S.C. § 7545(d), commence an action to enforce this Agreement or to recover the civil penalty provided for in section § 211 of the 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 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.

8. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.

9. 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.

10. 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.

11. 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.

12. The validity, enforceability, and construction of all matters pertaining to this

Agreement shall be determined in accordance with applicable federal law.

13. 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 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:

Al's Auto Service

by: Alfred Martins
Al Martins, Owner

Date: 5-15-00

United States
Environmental Protection Agency

by: Richard Biondi/fm
Bruce C. Buckheit, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

Date: 7/28/00