

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

\_\_\_\_\_  
In the Matter of: )  
EZ Serve Convenience )  
Store, Inc. )  
Respondent. )  
\_\_\_\_\_

SETTLEMENT AGREEMENT

AED/MSEB - 5046

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and E-Z Serve Convenience Store, Inc., 2550 North Loop West, Suite 600, Houston, Texas 77092 (hereafter "Respondent").

Preliminary Statement

1. On February 24, 2000, a Notice of Violation ("Notice") was issued to Respondent for violation of § 211 of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the volatility regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). See Attachment 1. This law provides that no person may sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce any gasoline whose Reid Vapor Pressure ("RVP") exceeds the applicable standard. Violators of this law are subject to a maximum civil penalty of \$27,500 per day for each violation and the amount of the economic benefit or savings resulting from the violation.

2. After considering the gravity of the alleged violation, Respondent's history of compliance with the regulations, and the size of Respondent's business, EPA proposes a civil penalty of \$7,250 (hereafter "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. By entering into this Agreement, Respondent does not admit that it is in any way responsible for the alleged violation or that any violations have occurred.

6. 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 arising out of this Agreement or the subject matter of this Agreement:

a. At all relevant times, Respondent was a retailer as defined within the meaning of 40 C.F.R. § 80.2.

b. On June 19, 1998, an approved EPA compliance survey was conducted at E-Z Serve # 2066, a Citgo branded retail outlet, located at 1020 Bridge City Avenue, Bridge City, Louisiana 70094. The Rvp standard for this area is 7.8 psi.

c. As a result of the inspection, EPA determined that Respondent's Citgo branded retail outlet was selling, offering for sale, and dispensing midgrade conventional gasoline that had an Rvp of 9.04 psi.

d. Where the gasoline contained in any storage tank at any retail outlet is found in violation, the retailer shall be deemed in violation. Therefore, Respondent is liable for one (1) violation of 40 C.F.R. § 80.27(a)(2) pursuant to 40 C.F.R. § 80.28(e)(4).

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

7. After considering the gravity of the alleged violation, Respondent's history of compliance with the regulations, EPA has determined to remit and mitigate the civil penalty to \$7,250 subject to successful completion of the terms of this Agreement.

a. Respondent agrees to pay \$7,250 to the United States of America within thirty (30) days from the date that this Agreement is executed by EPA ("the due date"). Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717.

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  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
Attn.: AED/MSEB - 5046

A photocopy of the check shall be mailed simultaneously to:

J. L. Adair, Attorney/Advisor  
U.S. Environmental Protection Agency  
AED/MSEB (2242A)  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
Attn.: AED/MSEB - 5046

8. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 7 of this Agreement, Respondent agrees to pay a stipulated penalty of \$14,500. This stipulated penalty is in addition to the proposed penalty. 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 Clean Air Act, 42 U.S.C. § 7545(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to § 211 of the Clean Air 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 Clean Air 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.

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

10. 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.

11. 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.

12. 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.

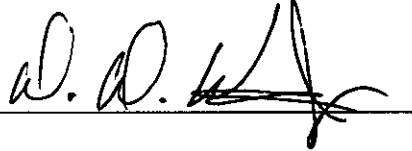
13. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

14. 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 § 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; 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:

E-Z Serve Convenience Store, Inc.

by: 

Date: 9/8/00

United States  
Environmental Protection Agency

by: 

Date: 10/2/00

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

February 24, 2000

**CERTIFIED MAIL #377 508 190**  
**RETURN RECEIPT REQUESTED**

The Prentice Hall Corporation System, Inc.  
Registered Agent for  
E-Z Serve Convenience Store, Inc.  
701 South Peters St.  
2nd Floor  
New Orleans, LA 70130

Re: File No. AED/MSEB - 5046

**NOTICE OF VIOLATION(S) OF THE CLEAN AIR ACT**

Dear Agent:

On June 19, 1998, representatives of the United States Environmental Protection Agency (EPA) conducted an inspection at E-Z Serve #2066 gasoline retail outlet located at 1020 Bridge City Ave., Bridge City, Louisiana. The inspection was conducted to determine compliance with section 211 of the Clean Air Act, 42 U.S.C. § 7545, and the regulations issued thereunder (40 C.F.R. Part 80).

Where inappropriate fuels are used in internal combustion engines, the emissions of harmful gases can increase significantly. Notwithstanding improvements in vehicle emission controls, emissions from motor vehicles continue to make up a very large portion of all air pollution. Congress has established a program of improvement and regulation of fuels to protect our air quality from unnecessary pollution associated with the misfueling of vehicles.

EPA regulations require that no person may sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce any gasoline whose Reid Vapor Pressure (RVP) exceeds the applicable standard. The regulations also require



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contains at least 50% recycled fiber

retailers to limit the flow rate from nozzles used to dispense gasoline into motor vehicles to a maximum of 10 gallons per minute. EPA has determined that gasoline sold or used at E-Z Serve #2066 failed to meet the RVP standard specified in 40 CFR § 80.27(a)(2). In particular, the mid-grade conventional unleaded gasoline had an RVP of 9.04 psi on June 19, 1998, which violates the applicable maximum standard of 7.8 psi. Additionally, during this inspection it was determined that one nozzle on a gasoline pump with serial number 520688 exceeded the maximum flow rate of 10 gallons per minute specified in 40 CFR § 80.22(j). As a retailer who owns, leases, operates, controls or supervises the facility where the violations were found, E-Z Serve Convenience Stores, Inc. is liable for the violation of 40 C.F.R. § 80.27(a)(2) pursuant to 40 C.F.R. § 80.28(e)(1) and is liable for the violation of 40 CFR § 80.22(j).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize EPA to assess a civil penalty of up to \$27,500 per day for each such violation plus the economic benefit or savings resulting from the violations. In determining the appropriate penalty for violations such as these we consider the gravity of the violations, the economic benefit or savings (if any) resulting from the violations, the size of your business, your history of compliance with the Act, actions taken by you to remedy the violations and prevent future violations, the effect of the penalty on your ability to continue in business and other matters as justice may require. Based on these factors we propose a civil penalty of \$7,250 for the violations alleged in this Notice.

We encourage early settlement of matters such as this. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violations are corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court.

Please contact the EPA attorneys designated below regarding this Notice:

Judith E. Graham, Attorney or  
Ervin B. Pickell, Attorney  
U.S. Environmental Protection Agency  
Mobile Source Enforcement Branch  
Air Enforcement Division  
12345 W. Alameda Parkway  
Suite 214  
Denver, CO 80228  
Phone Number: (303) 969-6476

Let me once again emphasize that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement in this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Richard Beaudiff".

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