

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

_____)	
In the Matter of:)	
)	
Mobil Oil Australia Pty Ltd)	SETTLEMENT AGREEMENT
)	AED/MSEB - # 7013
)	
_____)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereinafter "EPA") and Mobil Oil Australia Pty Ltd, which is located at 417 St. Kilda Road, Melbourne VIC 3005, Australia (hereinafter "Respondent").

A. Preliminary Statement

1. On October 3, 2002, representatives of Respondent and BP South West Pacific Limited ("BP Pacific") notified EPA via telephone of the possible existence of violations of the gasoline detergent additization regulations, 40 C.F.R. Part 80, Subpart G (the "detergent regulations"). The Respondent and BP Pacific provided more detailed information about these violations in subsequent correspondence to EPA dated November 20, 2002, and in other submissions.

2. The Respondent and BP Pacific disclosed, inter alia, that between approximately April 2000 and August 2002, the Respondent transferred at least 23 barge loads of unadditized gasoline to American Samoa (hereinafter "Samoa"). The Respondents also provided documentation in the form of product transfer documents ("PTDs") for these transfers, which did not indicate the unadditized status of the gasoline.

3. The detergent regulations, at 40 C.F.R. § 80.168(a)(1), prohibit any person from causing the presence in the distribution system of gasoline that has not been additized in accordance with the detergent certification requirements of 40 C.F.R. § 80.161. The detergent regulations further provide, in 40 C.F.R. § 80.168(c), that no person may supply or transport gasoline unless there is a PTD for the gasoline accurately complying with the information requirements of 40 C.F.R. § 80.171.

4. Section 205 of the Clean Air Act ("CAA"), 42 U.S.C. § 7524, and the detergent

regulations at 40 C.F.R. § 80.172, subject violators of these laws to a maximum civil penalty of \$27,500 per day for each violation occurring after January 30, 1997 until March 15, 2004, and the amount of economic benefit or savings resulting from each violation.

5. The Respondent and BP Pacific requested application to their disclosures of EPA's "Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations" (65 Fed. Reg. 19618 (April 11, 2000)) ("Audit Policy"). By Notices of Violation dated November 12, 2003, EPA notified the Respondent and BP Pacific of EPA's determination that the facts of the case did not warrant application of an Audit Policy penalty reduction.

6. EPA and Respondent ("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.

B. Recitals

1. 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 this matter.

2. 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.

3. 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.

4. At all relevant times the Respondent was the gasoline distributor and detergent blender of the gasoline it shipped by barge to Samoa, within the meaning of 40 C.F.R. §§ 80.02 and 80.140, respectively.

5. EPA alleges that the Respondent delivered the following barge loads of unadditized gasoline to Samoa between April 2000 and September 2002, causing such gasoline to be in the Samoan gasoline distribution system:

Date	Name of Mobil Tanker	Amount of Unadditized Gasoline
April, 2000	Haustrum	425,014
June	Royal Arrow	355,423
Date	Name of Mobil Tanker	Amount of Unadditized Gasoline
July	Hustula	357,293
September	Royal Arrow	361,068
November	Hanimea	367,492
January, 2001	High Spirit	350,217
February	Royal Arrow	232,920
April	High Spirit	112,155
May	High Spirit	428,686
June	High Spirit	362,608
July	High Spirit	69,302
September	High Spirit	394,961
October	High Spirit	158,607
November	High Spirit	216,550
December	Haustrum	298,493
January, 2002	Iver Exporter	245,430
March	P/Gull; B/Caroline	348,045 (combined quantity)
May	Iver Exporter; Alfios	385,223 (combined quantity)
June	Artemis	168,198
July	Captain Martin	226,576
August	Haustrum	331,740
Total	23 Barge Shipments	6,196,001 Gallons

6. The barge shipments of unadditized gasoline referenced in paragraph B-5, above, were

not accompanied by PTDs with additization status information and unadditized gasoline warning language, as required by 40 C.F.R. § 80.171.

7. By entering into this Agreement, the Respondent neither admits nor denies that it is in any way responsible for the alleged violations or that any violations have occurred.

8. As the gasoline distributor and detergent blender of the gasoline, EPA alleges that the Respondent is responsible for the twenty-three (23) violations of 40 C.F.R. § 80.168(a)(1) and 40 C.F.R. § 80.168(c), respectively, identified in paragraphs B-5 and B-6, above, pursuant to 40 C.F.R. § 80.169(a)(1)(ii) and 40 C.F.R. § 80.169(a)(5).

C. Terms of the Agreement

1. After considering the gravity of the alleged violations, the Respondent's history of compliance with the detergent regulations, the terms of this Agreement, and facts presented by the Respondent, EPA has determined to mitigate the civil penalty for the alleged detergent program violations identified in EPA's November 12, 2003 NOV to the Respondent and in paragraphs B-5 & 6 of this Agreement, to \$69,000, subject to successful completion of the terms of this Agreement.

2. As a means of resolving the alleged detergent program violations on Samoa identified in the November 12, 2003 NOV and paragraphs B-5 & 6 of this Agreement, the Respondent agrees to pay to EPA a civil penalty of \$69,000 within sixty days of receipt of the fully executed Agreement from the EPA (the "penalty due date"). Late payment of this civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. The Respondent agrees to pay this penalty to EPA by cashier's check, with the notation "AED/MSEB - 7013", 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 360277M
Pittsburgh, Pennsylvania 15251
Attention: AED/MSEB - 7013

A copy of the penalty check shall be simultaneously forwarded to Judy Lubow at the following address:

Judy Lubow, Attorney
U.S. Environmental Protection Agency
12345 West Alameda Parkway
Suite 214
Denver, CO 80228

3. Supplemental Environmental Project. The Respondent also agrees to implement a Supplemental Environmental Project ("SEP") in accordance with the provisions of EPA's Supplemental Environmental Projects Policy (May 1, 1998). In implementing the SEP, the Respondent agrees to spend, by the penalty due date, not less than \$160,454 (the "SEP expenditure"), in accordance with the requirements of this paragraph. This SEP expenditure is to be used for the purchase, installation, and initial training to use respiratory equipment to benefit the people of Samoa. The SEP's respiratory equipment is to be purchased for the LBJ Tropical Medical Center in Pago Pago, American Samoa (hereinafter the "LBJ Medical Center").

- a. The Respondent is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Agreement.
- b. With regard to the SEP, the Respondent certifies the truthfulness and accuracy of each of the following:
 - (i) As of the date of this Agreement, the Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is the Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
 - (ii) The SEP is not a project that the Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Agreement;
 - (iii) The Respondent has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action;
 - (iv) The Respondent will not receive any reimbursement for any portion of the SEP expenditure from any other person; and
 - (v) The Respondent will not deduct any of the SEP expenditures from its taxes.
- c. SEP Completion Report
 - (i) Within 30 days after the penalty due date, the Respondent shall submit a SEP Completion Report to Judy Lubow of EPA, at the address specified in paragraph C-2.

above, which shall contain the following information:

- (1) A description of the respiratory equipment and training purchased for the LBJ Medical Center, plus for each purchase, a copy of the vendor sale documentation and a copy of Respondent's check to the vendor.
- (2) Certification that the SEP has been fully implemented pursuant to the provisions of this Agreement, and that the Respondent has not and will not claim any of the SEP expenditure as a deduction from its tax obligations.

(ii) The SEP Completion Report required under this subparagraph (c) shall be signed and dated by an official of the Respondent with knowledge of the SEP and shall bear the following certification language:

"I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete."

- d. Any oral or written public statement in print, film, or other media, made by the Respondent making reference to the SEP under this Agreement shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action by the United States Environmental Protection Agency against Mobil Oil Australia Pty, Ltd."

4. Time is of the essence to this Agreement. Failure to timely pay or perform shall result in the following:

- a. Upon Respondent's failure to timely pay the civil penalty referenced in paragraph C-2 above by the penalty due date identified in that paragraph, the Respondent agrees to pay a stipulated penalty of \$69,000. This stipulated penalty would be in addition to the civil

penalty agreed to and referenced in Paragraph C-2.

- b. Upon Respondent's failure to timely pay the full SEP expenditure of \$160,454 required under paragraph C-3, above, the Respondent agrees to pay a stipulated penalty amounting to the difference between the full expenditure, and the amount the Respondent actually paid towards the SEP. This stipulated penalty is in addition to the civil penalty agreed to and referenced in Paragraph C-2, above.
- c. The parties further agree that upon the failure to timely pay or perform under the requirements of paragraphs C-2 and 3, above, EPA may refer this matter to the United States Attorney General 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 civil penalties for the disclosed violations pursuant to § 205 of the Clean Air Act, 42 U.S.C. § 4524, or pursue any other remedies available to it. The Respondent also specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on a 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.

5. This Agreement becomes effective upon the date executed by EPA, at which time a copy of the fully executed Agreement will be returned to Respondent at the following addresses:

Mobil Oil Australia
c/o John Kalfas, Products Trader and Supply Team Lead
Pegasus Centre
Corner of Kororoit Creek & Millers Roads
Altona, Victoria 3018
Australia

Margaret S. Bass, Counsel
Exxon Mobil Corporation
3225 Gallows Road
Fairfax, VA 22037

6. The parties hereby represent that the individual or individuals executing this Agreement on behalf of the respective party is authorized to do so and that such execution is

intended and is sufficient to bind the respective party.

7. The 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.

8. 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.


9. The effect of the settlement described in the Paragraph C-11 of this Agreement is conditional upon the accuracy of the Respondent's representations to EPA as memorialized in paragraph A-2 of this Agreement.

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

11. Upon successful 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 the 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. This Agreement in no way affects, or relieves the Respondent of responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

Mobil Oil Australia Pty Ltd


by: 
Printed Name:
Printed Title:

Date: MAY 2, 2005

GLENN W HENSON
Manager Refining
Australia & New Zealand

Settlement Agreement in the Matter of Mobil Oil Australia Pty Ltd

**United States
Environmental Protection Agency**

by:  _____
Adam M. Kushner, Acting Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

Date: 5.18.06