

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

In the Matter of: )  
 )  
PRIDE CONVENIENCE, INC. )  
 )  
Respondent. )  
 )

SETTLEMENT AGREEMENT  
AED/MSEB - 4770

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Pride Convenience, Inc., and its corporate officials, 246 Cottage Street, Springfield, Massachusetts 01104 (hereafter "Respondent").

Preliminary Statement

1. On December 5, 1997, a Notice of Violation ("Notice")/Request for Information was issued to Respondent for violation of § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the reformulated gasoline ("RFG") regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). See Attachment 1. This law provides that only RFG may be sold in a covered area and sets out certain minimum and maximum standards for such gasoline. This law also provides that no person shall manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of 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. Violators of this law are subject to a maximum civil penalty of \$25,000 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 violation, the economic benefit or savings (if any) resulting from the violation, Respondent's history of compliance with the Clean Air Act, the size of Respondent's business, Respondent's actions to remedy the violation and/or to prevent recurrence of further

violation, the effect of the penalty on Respondent's ability to continue in business, and such other matters as justice may require, the EPA proposes a civil penalty of \$10,000 (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 violation has 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 and/or distributor as defined within the meaning of 40 C.F.R. § 80.2.

b. On June 15, 1997, an EPA approved compliance survey was conducted at Respondent's retail outlet located at 1226 W. Columbus Avenue, Springfield, Massachusetts 01103. 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, EPA has determined that Respondent's retail outlet, which is located in the VOC-Control Region 2 reformulated gasoline covered area, was selling, dispensing, or offering for sale gasoline represented to be reformulated whose Rvp exceeded the 8.3 psi standard. The sample of gasoline taken from the retail outlet had a Rvp of 9.31 psi.

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 distributor shall be deemed in

violation. EPA alleges that as the retailer and/or distributor who sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of gasoline which is in the storage tank containing gasoline found to be in violation Respondent is liable for a violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a)(1).

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. Respondent agrees to pay \$10,000 to the United States of America within eight (8) consecutive quarterly payments of \$1250. The first payment shall be due within thirty (30) 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, if the debt is not paid within 30 days following the due date, interest will accrue from the due date as the rate of eight percent (8%) per annum 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 six percent (6%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

Respondent agrees to pay the amount by check made payable to the "United States of America," and to mail the payments to:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
Attn.: AED/MSEB - 4770

A photocopy of the checks shall be mailed simultaneously to:

J. L. Adair, Attorney/Advisor  
U.S. Environmental Protection Agency  
MSEB/AED (2242-A)  
401 M Street, S.W.  
Washington, D.C. 20460  
Attn.: AED/MSEB - 4770

a. Respondent further agrees to institute procedures at its retail outlets that will ensure that its gasoline tanks are turned over and are in compliance with the fuels regulations at the start of the Rvp season.

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 \$25,000. 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:

Pride Convenience, Inc.

by: Robert A. Bell

Date: 9-27-98

United States  
Environmental Protection Agency

by: Richard Blundieff

Date: 6-10-98

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

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

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CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mr. Robert Bolduc, President  
Pride Convenience, Inc.  
246 Cottage Street  
Springfield, MA 01104

Re: File No. AED/MSEB - 4770

NOTICE OF VIOLATION OF THE CLEAN AIR ACT AND  
REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF THE  
CLEAN AIR ACT

Dear Mr. Bolduc:

On June 15, 1997, an approved U.S. Environmental Protection Agency ("EPA") compliance survey was conducted at a Pride Convenience, Inc. ("Pride") retail outlet, located at 1226 W. Columbus Avenue, Springfield, Massachusetts 01103. The survey was conducted to determine compliance with section 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(k), and the regulations issued thereunder (40 C.F.R. part 80, subpart D). 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.

The applicable regulations provide that no person may manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of 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. This law also subjects violators to a maximum civil penalty of \$25,000 per day for each violation in addition to recovery of the amount of the economic benefit or savings resulting from the violation.

As a result of the inspection, EPA has determined that the Pride retail outlet, which is located in the VOC-Control Region 2

The EPA attorney designated below has been assigned to this case. All information should be sent to the case attorney.

Please contact this attorney regarding the Notice of Violation and Request for Information.

Jocelyn L. Adair, Attorney  
U.S. Environmental Protection Agency  
Mobile Sources Enforcement Branch (2242-A)  
Air Enforcement Division  
401 M Street, S.W.  
Washington, D.C. 20460  
Phone number: (202) 564-1011

Please 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,

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

reformulated gasoline covered area, was selling gasoline in violation of 40 C.F.R. § 80.78(a)(1) in that it failed to meet the applicable Rvp standard specified in 40 C.F.R. § 80.41. The gasoline had a Rvp of 9.45 psi which violates the applicable standard of 8.3 psi. As the distributor/retailer who owns, leases, operates, controls or supervises the retail outlet where the violation was found, Pride is liable for the violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a)(1).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize the Administrator of EPA to assess a civil penalty of up to \$25,000 for every day of each violation and the economic benefit or savings resulting from the violation. In determining the appropriate penalty for the noticed violation, we consider the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of your business, your history of compliance with the Clean Air Act, actions taken by you to remedy the violation and to prevent recurrence of further violations, the effect of the penalty on your ability to continue in business and such other matters as justice may require.

We believe it is in your interest to demonstrate that remission or compromise of the penalty amount is appropriate. However, in order to assist us in developing the appropriate penalty and settlement positions, we have prepared the enclosed Request for Information. Under the law you are required to submit this information or be subject to additional penalties and other sanctions above and beyond those assessed for the fuel violation identified in this Notice. In addition, if you do not submit this information in a timely manner, we will be forced to make assumptions with regard to the factors to consider in determining the appropriate amount of civil penalty which may not be in your interest or whether remission or compromise of the civil penalty amount is appropriate.

We encourage early settlement of such matters. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violation is 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.



Enclosure

REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF THE  
CLEAN AIR ACT, 42 U.S.C. § 7414

Re: File No. AED/MSEB - 4770

Section 114(a) of the Act, 42 U.S.C. § 7414(a), provides that "the Administrator may require any person.... who is subject to any requirement of this Act ...to make such reports ... and provide such other information, as the Administrator may reasonably require." Respondent is subject to the requirements and prohibitions of the reformulated gasoline ("RFG") and anti-dumping requirements of section 211(k) of the Act, 42 U.S.C. § 7545(k) and thereby is also subject to the informational requirements of section 114(a) of the Act.

Pursuant to the authority contained in section 114 of the Act, 42 U.S.C. § 7414, provide the following information for Pride Convenience, Inc. ("Pride").

1. We are assuming that Pride and its affiliates and subsidiaries income before expenses or deductions is over \$250 Million. If you do not agree, submit your financial statements for the prior three fiscal years and this year current to date including but not limited to balance sheets, profit and loss statements, statements of changes in position, and federal income tax returns.
2. Provide a comprehensive description of Pride and its affiliates and subsidiaries, including its business operations, number of customers, corporate structure, officers, and board of directors.
3. Provide documents demonstrating what actions were taken to remedy the violation, including the disposition of non-complying gasoline, and to ensure that similar types of violations are less apt to occur in the future.
4. Provide an inventory of the gasoline offered for sale at the Pride retail outlet, located at 1226 W Columbus Avenue, Springfield, MA, for the period April 15th through July 1st. At a minimum, the inventory shall include the following: (a) for each gasoline storage tank at the retail outlet, identify the

size and grade of gasoline stored in the tank, (b) the volume of gasoline in each tank on April 15th, and (c) all product transfer documents/bills of lading for gasoline delivered to the retail outlet.

5. Provide documents demonstrating that Pride had and utilized a quality assurance program for reformulated gasoline.

6. Provide any and all other information indicating that remission or compromise of the civil penalty is appropriate. You may elect to provide a statement of the cause of the violation, if known, and any mitigating factors you desire to bring to our attention.

The response to this request shall be full, complete, and to the best of your knowledge. A reply which is false, misleading, or made without regard to its veracity is, in our judgment, equivalent to a refusal to submit information. In order for us to proceed expeditiously with our enforcement docket, your response must be submitted within fifteen days after the date of this letter. If you encounter difficulty in responding to this request within this time frame, please contact the case attorney identified herein. Absent a written extension of the required response date, your failure to respond by the date set forth may lead to immediate enforcement action and a lost opportunity for early settlement of this matter. EPA's enforcement options include the issuance of a compliance order by the Administrator under section 113(a) of the Act, or the filing of a civil action seeking a permanent or temporary injunction, or a civil penalty of not more than \$25,000 per day of violation, or both, under section 113(b) of the Act. Please be aware that a knowing or willful submission of false, fictitious, or fraudulent statements or representations may subject you to possible criminal liability for filing false statements.

Pursuant to EPA regulations appearing at 40 C.F.R. Part 2, you are entitled to assert a confidentiality claim covering any part of the submitted information. If you do not assert such a claim, the submitted information may be available to the public without further notice. Information subject to a business confidentiality claim may be made available to the public only to the extent set forth in the above cited regulations.