

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.

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|-------------------------------|---|--------------------------|
| In the matter of: |) | |
| |) | |
| RAD Energy Corporation |) | File No. MSEB/AED - 5080 |
| |) | |
| Respondent. |) | SETTLEMENT AGREEMENT |

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and RAD Energy Corporation (Respondent).

A. Preliminary Statement

1. On July 19, 2000, a Notice of Violation (NOV) was issued to Respondent alleging that Respondent had violated § 211 of the Clean Air Act (the Act), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 CFR Part 80. The NOV stated that on July 17, 1999 gasoline was being sold and offered for sale in violation of 40 C.F.R. § 80.78(a)(1). The Notice also stated that the Respondent, as the supplier to the retail outlet where the violation was found, was liable for this violation pursuant to 40 C.F.R. § 80.79(a). The NOV further stated that the statutory civil penalty is Twenty-Five

Thousand Dollars (\$27,500) per day for each such violation plus the economic benefit or savings resulting from the violations pursuant to § 211(d) of the Act, 42 U.S.C. § 7545(d).

2. After considering the gravity of the violations and Respondent's history of compliance with the Act, EPA proposed in the NOV a civil penalty of Three Thousand Three Hundred Dollars (\$3,300).

3. The EPA and the Respondent desire to settle this matter according to the mutual covenants and agreements contained herein. The consideration is acknowledged to be adequate, and the EPA and the Respondent agree as set forth herein.

B. Terms of Agreement

1. The EPA and the Respondent agree that the settlement of this matter is in the public interest and that this Agreement is the most appropriate means of resolving the matter.

2. The EPA and the Respondent stipulate and agree to the following facts. It is further agreed that these stipulations are applicable to this Agreement and any proceeding arising out of this Agreement or the subject matter of this Agreement:

a. At all relevant times, the Respondent was a distributor within the meaning of 40 C.F.R. § 80.2 and/or a person within the meaning of section 302(e) of the Clean Air Act 42 U.S.C. § 7602(e).

b. On July 17, 1999, a reformulated gasoline survey inspection was conducted at Getty Station #79, a retail facility located at 564 W. Montauk Highway, West Islip, New York. During the inspection, the inspectors took a sample of 87 octane gasoline being sold and offered for sale at the facility. EPA Laboratory analysis determined that the regular (87 octane) gasoline had a VOC emission performance reduction of 4.16 percent, which fails to meet the minimum VOC emissions performance reduction of 13.1 percent. In addition, the regular unleaded gasoline contained 1.59% ethanol and 9.58% methyl tertiary butyl ether. The VOC emissions performance reduction failure was caused by the addition of ethanol to the gasoline. Investigation of this violation showed that all product delivered to this retail outlet on July 14, 1999, came from Respondent's terminal located in Oceanside, New York. EPA's investigation revealed further that Respondent allowed the delivery of gasoline containing ethanol to this retail outlet, which caused the violation of the applicable VOC standard at the retail outlet. In addition, 40 CFR §80.78 (a) (8) prohibits the mixing of any VOC-controlled RFG containing ethanol with VOC-controlled RFG containing any other oxygenate from January 1 through September 15.

c. This constitutes a violation of 40 C.F.R. § 80.78(a)(1). Respondent, as the distributor of this product, is liable for

violating 40 CFR § 80.78(a) (8) and/or 40 CFR § 80.78(a) (1) pursuant to 40 CFR § 80.79(a).

d. In order to assure each gallon of gasoline sold is in compliance with the applicable gasoline standards, Respondent has taken steps to eliminate the conditions which caused the violation. In particular, Respondent has closed all valves in the rack system and removed the pressure relief valve, so that any thermal expansion will bleed back into the ethanol storage tank. These changes should insure no ethanol contamination into MTBE RFG gasoline.

e. Jurisdiction to settle this matter exists pursuant to § 211 of the Act, 42 U.S.C. § 7545, 40 C.F.R. Part 80, and other provisions of law.

3. After considering the gravity of the violation, the Respondent's history of compliance with the fuels regulations, the circumstances of this case, the Respondent's ability to continue in business, the terms of this Agreement, and other facts presented by the Respondent, the EPA has determined to conditionally remit and mitigate the proposed civil penalty to Two Thousand Two Hundred Dollars (\$2,200) pending successful completion of the terms of this Agreement. Respondent agrees to pay Two Thousand Two Hundred Dollars (\$2,200) within thirty days of receipt of a signed settlement agreement from EPA.

In accordance with section 3717 of the Debt Collection Act of 1982, 31 U.S.C. § 3717, if the debt is not paid within thirty 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 \$20.00 will also be imposed if the amount due is not paid by the due date, with an additional charge of \$10.00 for each thirty-day period. The Respondent agrees to pay the amount due by cashier's check or certified check payable to the "United States of America" and mailed to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
ATTN: AED/MSEB - 5080

A copy of the check shall be forwarded simultaneously to:

Angela E. Fitzgerald (2242A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

4. Timely performance is essential to this Agreement. Upon failure to timely perform pursuant to paragraph 3 of this Agreement, or upon default of or failure to comply with any terms of this Agreement by the Respondent, the parties agree that upon such default or failure to comply, EPA may commence an action to enforce this Agreement or to recover the civil penalty pursuant to § 205 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 Act, 42 U.S.C. § 7522, 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 the passage of time.

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

6. The Respondent hereby represents that the individual or individuals executing this Agreement on behalf of the Respondent are authorized to do so and that such execution is intended and is sufficient to bind the Respondent, its officers, agents, directors, owners, heirs, assigns, and successors.

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 matters consented to herein.

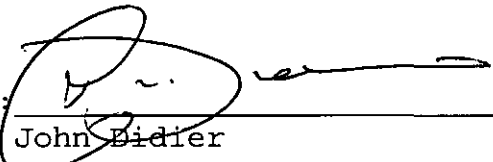
8. The terms of this Agreement are contractual and are not mere recitals. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

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

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

The following agree to the terms of this Agreement:


RAD Energy Corporation

by: 

John Didier
Vice President of Operations

Date: 8/1/00

United States
Environmental Protection Agency

by: 

Bruce C. Buckheit, Director
Air Enforcement Division

Date: 8/22/00