

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C.

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In the matter of:		)	
		)	
<b>RICHDALE DAIRY STORES</b>		)	File No. MSEB/AED - 4891
		)	
Respondent.		)	SETTLEMENT AGREEMENT
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THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency, (EPA) and RICHDALE DAIRY STORES (Respondent).

A. Preliminary Statement

1. On July 15, 1999, 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 June 11, 1998 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 owner of the retail outlet where the violation was found, was liable for this violation pursuant to 40 C.F.R. § 80.79(a)(4). 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 Six Thousand Dollars, (\$6,000).

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 retailer 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 June 11, 1998, an EPA inspection was conducted at Richdale Dairy Stores retail facility located at 27 Main Street, Middleton, Massachusetts. During the inspection, the inspectors took a sample of 89 and 93 octane gasoline being sold and offered for sale at the facility. EPA Laboratory analysis determined that

- (1) the midgrade (89 octane) gasoline had a VOC emission performance reduction of 5.21 percent, which fails to meet the minimum VOC emissions performance reduction of 13.1 percent, and
- (2) The premium (93 octane) gasoline had a VOC emission performance reduction of -32.17 percent, which fails to meet the minimum VOC emissions performance reduction of 13.1 percent.
- (3) This constitutes two violations of 40 C.F.R. § 80.78(a)(1).
- (4) EPA further determined that Respondent was liable for the violations as the retailer who owns, leases, operates, controls or supervises the retail outlet where the violations were found, pursuant to 40 CFR § 80.79 (a).

c. In order to assure each gallon of gasoline sold is in compliance with the applicable gasoline standards, Respondent has undertaken to make April and May deliveries to the lowest possible tank volume. 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:

- (1) 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.
- (2) 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 in the storage tank prior to the first delivery. For example, if 800 gallons is 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 ( $6 \times 800 = 4,800$ ).
- (3) 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.

d. 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 Four Thousand Dollars (\$4,000) pending successful completion of the terms of this Agreement. Respondent agrees to pay Four Thousand Dollars (\$4,000) 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 - 4891

A copy of the check shall be forwarded simultaneously to Angela E. Fitzgerald at the following address:

U.S. Environmental Protection Agency  
2242A  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

4. Timely performance is essential to this Agreement. Upon failure to timely perform pursuant to paragraphs B(3) or B(4) 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:

Richdale Dairy Stores

by: Al DiJanni, Pres Date: 7-5-00  
Al DiJanni, Owner  
Richdale Dairy Stores

United States  
Environmental Protection Agency

by: Richard Bondi/H Date: 7/28/00  
Bruce C. Buckheit, Director  
Air Enforcement Division