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

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In the Matter of:)
)
ROSSELLI FAMILY PARTNERSHIP)
Joseph F. Rosselli, Sr. General Partner)
d/b/a Rosselli' Automotive)
)
Respondent.)
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SETTLEMENT AGREEMENT
AED/MSEB - 4858

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Rosselli Family Partnership, Joseph F. Rosselli, Sr. General Partner, d/b/a Rosselli's Automotive, 1250 Rhawn Street, Philadelphia, Pennsylvania 19111-2638 (hereafter "Respondent").

Preliminary Statement

1. On December 28, 1998, a Notice of Violation ("Notice") was issued to Respondent for two (2) violations 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 \$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 violations, Respondent's history of compliance with the regulations, and the size of Respondent's business, EPA proposed a civil penalty of \$6,094 (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 violations 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 as defined within the meaning of 40 C.F.R. § 80.2.

b. On June 1, 1998, an approved EPA compliance survey was conducted at Respondent's retail outlet, Rosselli's Automotive, located at 1250 Rhawn Street, Philadelphia, PA 19111. Respondent's retail outlet is located in the VOC Control Region 2 reformulated gasoline covered area. The VOC emissions performance reduction standard for this area is 13.1 percent.

c. On June 29, 1998, EPA also conducted a follow-up inspection at Respondent's retail outlet, Rosselli's Automotive.

d. As a result of the June 1st inspection, EPA determined that Respondent was selling, offering for sale, and dispensing premium gasoline represented to be reformulated whose VOC emissions performance was -67.74 percent. This represented not a reduction, but an increase in VOC emissions performance of 80.84 percent.

e. As a result of the June 29th inspection, EPA determined that Respondent was selling, offering for sale, and dispensing

premium gasoline represented to be reformulated whose VOC emissions performance was -3.01 percent. This represented not a reduction, but an increase in VOC emissions performance of 16.10 percent.

f. 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 two (2) violations of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a)(1).

g. 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 violations, Respondent's history of compliance with the regulations, Respondent's size of business, and ability to pay a penalty, EPA has determined to remit and mitigate the civil penalty to \$3,000 subject to successful completion of the terms of this Agreement.

Respondent agrees to pay \$3,000 to the United States of America in six (6) consecutive quarterly payments of \$500. 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 each payment to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn.: AED/MSEB - 4858.

A photocopy of the check shall be mailed simultaneously to:

J. L. Adair, Attorney/Advisor
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
Air Enforcement Division (2242-A)
401 M Street, S.W.
Washington, D.C. 20460
Attn.: AED/MSEB - 4858.

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 \$6,074. 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:

Rosselli Family Partnership
Joseph F. Rosselli, Sr. General Partner
d/b/a Rosselli's Automotive

by: *J. Rosselli*

Date: 6-30-99

United States
Environmental Protection Agency

by: *Richard Birnholz*

Date: 7/15/99

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