

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,
Plaintiff,

v.

RYMES HEATING OILS, INC. and
JAMES RYMES, Individually,

Defendants.

Civil Action No. 00-453-B

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and by authority of the Attorney General, filed contemporaneously with this Consent Decree a Complaint against Defendants, Rymes Heating Oils, Inc. ("Rymes Heating Oils") and James Rymes, individually ("Rymes"), alleging violations of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7401 et seq., and

WHEREAS, the Complaint in this action alleges that Defendants are and/or were engaged in the business of gasoline and diesel distribution, and

WHEREAS, the Complaint alleges that Defendants sold and dispensed conventional gasoline ("CG") within an area where the use of reformulated gasoline ("RFG") is required, and

WHEREAS, the Complaint alleges that Defendants distributed motor vehicle diesel fuel which had a sulfur content in excess of the legal limits and illegally caused or allowed the introduction of such high sulfur diesel fuel into motor vehicles, and

WHEREAS, Defendants deny the allegations set forth in the Complaint, and

WHEREAS, Defendants have cooperated with the Government in resolving this matter without litigation through their production of documents to the Government, including information not specifically requested by the Government, and

WHEREAS, the United States and Defendants (collectively, the "Parties") have agreed to settle the above-captioned lawsuit without further litigation and the United States believes it is in the public interest to settle this matter on the terms set forth below, and

WHEREAS, the Parties consent to the entry of this Consent Decree;

NOW, THEREFORE, without trial or adjudication of any issue of fact or law and upon consent of the United States and Defendants, by their attorneys and authorized officials, it is hereby ORDERED AND DECREED as follows:

I. Jurisdiction and Venue

1. This Court has jurisdiction over the subject matter of this action and the Parties to this Consent Decree pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Section 211 of the Act, 42 U.S.C. § 7545. Defendants hereby waive all objections to either jurisdiction or venue and agree not to challenge the Court's jurisdiction to enforce or to take any other action to effectuate this Consent Decree. Defendants acknowledge that the Complaint states claims against Rymes and Rymes Heating Oils upon which relief may be granted, however, Defendants have denied the allegations set forth by the United States in the Complaint.

II. Applicability

2. Each of the undersigned representatives of Defendants certifies that she or he is fully authorized by Rymes and Rymes Heating Oils to enter into the terms and conditions of this Consent Decree and to execute and legally bind Defendants to the Consent Decree. The

provisions of this Consent Decree apply to and are binding upon Rymes and Rymes Heating Oils as well as Rymes Heating Oils' officers, directors, agents, servants, employees, successors and assigns. Rymes Heating Oils shall provide a copy of this Consent Decree to each of its officers and directors, and to each agent, servant or employee responsible for performance of the obligations herein.

3. In the event that Rymes and/or Rymes Heating Oils sells, transfers or assigns all or a portion of its interest in the operations which are subject to this Consent Decree prior to the termination of this Consent Decree in accordance with the terms of Paragraph 25, Rymes and/or Rymes Heating Oils shall notify in writing the purchaser, transferee or assignee of the existence of this Consent Decree and provide a copy thereof and simultaneously serve copies of such notice upon the Environment and Natural Resources Division of the United States Department of Justice ("DOJ"), the Office of Environmental Stewardship of EPA Region I - New England, the Office of Enforcement and Compliance Assurance of EPA Headquarters, and the United States Attorney's Office for the District of New Hampshire at the addresses listed in Paragraph 15.

III. Compliance

4. Defendants certify that they are now in compliance, and agree to comply in the future, with Section 211 of the Act, 42 U.S.C. § 7545, and the regulations at 40 C.F.R. §§ 80.29 and 80.78.

IV. Civil Penalties

5. Defendants shall pay to the United States a total civil penalty of two hundred thousand dollars (\$200,000) (hereinafter "Civil Penalty") within thirty (30) days of entry of this Consent Decree. Defendants shall pay interest, accrued from the payment due date through the date of

payment, on any portion of the above-referenced Civil Penalty remitted beyond the due date at the rate established in accordance with 28 U.S.C. § 1961. Defendants are jointly and severally liable for payment of the Civil Penalty and for the payment of any interest, stipulated penalty, or other fee or expenses that Defendants may be required to pay under this Decree.

6. Defendants shall pay the Civil Penalty by electronic funds transfer by 4:00 p.m. Eastern Time on or before the due date to the Department of Justice lockbox bank in accordance with written instructions to be provided to Defendants upon lodging of this Consent Decree. If necessary, the United States will provide any revised instructions within 10 days of entry of the Decree. Such payment shall reference the Department of Justice Case No 90-5-2-1-06111 and the civil action number of this case, USAO File No. 98V0163. The cost of such electronic funds transfer shall be Defendants' responsibility. Within five (5) business days of payment of any amount of the Civil Penalty, Defendants shall provide written notice of payment to DOJ, EPA Region I - New England, EPA Headquarters, and the United States Attorney for the District of New Hampshire at the addresses listed in Paragraph 15. The written notice shall also contain a statement showing the calculation of any interest included in the payment.

7. Penalty payments made pursuant to Paragraphs 5 and 6 of this Consent Decree are civil penalties within the meaning of the Internal Revenue Code, 26 U.S.C. §162(f), and are not tax deductible for the purposes of Federal Law.

V. Stipulated Penalties

8. In the event that Defendants fail to comply with any of the terms or provisions of this Consent Decree relating to payment of the Civil Penalty under Paragraphs 5 and 6, Defendants shall pay a total stipulated penalty of \$750 for each day that payment of the Civil Penalty is late.

9. Stipulated penalties shall begin to accrue on the day that the violation of this Consent Decree first occurs, and shall continue to accrue for each day until the date upon which the violation is fully corrected. Separate stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Stipulated penalties shall accrue regardless of whether United States has notified Defendants that a violation of this Consent Decree has occurred.

10. Stipulated penalties shall become due and owing, and shall be paid, by Defendants to the United States not later than thirty (30) days after the United States provides written notice of a demand for payment. The United States in its sole and unreviewable discretion reserves the right not to demand any portion of accrued stipulated penalties. If any stipulated penalties demanded by the United States are not paid in full within thirty (30) days of the demand, Defendants shall owe interest on the unpaid penalties from the 30th day after the demand at the rate established in accordance with 28 U.S.C. § 1961.

11. Defendants shall pay the full amount of any stipulated penalties due by electronic funds transfer, in accordance with written instructions to be provided to Defendants upon entry of this Consent Decree, referencing USAO File No. 98V0163 and DOJ Case No. 90-5-2-1-06111. The cost of any such electronic funds transfer shall be Defendants' responsibility. Within five (5) business days of each such payment, Defendants shall provide written notice of payment to EPA Region I, EPA Headquarters, DOJ, and the United States Attorney for the District of New Hampshire. The written notice shall also contain a statement showing the calculation of any interest included in the payment.

12. Payments made pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax deductible expenditures for purposes of federal law.
13. If the United States must bring an action to collect any portion of the Civil Penalty that Defendants are required to pay pursuant to Section IV (Civil Penalty), or any payment of stipulated penalties determined to be due and owing pursuant to Section V (Stipulated Penalties), Defendants shall pay, in addition to such penalties and interest, the United States' enforcement expenses, including but not limited to attorney time and costs incurred for collection proceedings during the period for which such failure to pay or enforcement proceeding persists.
14. The stipulated penalty provisions of this Section shall be in addition to any rights reserved by the United States pursuant to Sections VIII (Reservation of Rights) and IX (General Provisions). Except as set forth in Paragraph 16, nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or EPA to seek other remedies or sanctions available by virtue of Defendants' violation(s) of this Consent Decree or of any statutes, regulations, or permits referenced within it.

VI. Notices

15. Whenever under the terms of this Consent Decree written notice is required to be given or written information is required to be sent to EPA Region I, EPA Headquarters, DOJ, the United States Attorney for the District of New Hampshire, Rymes or Rymes Heating Oils, the notice or information shall be mailed via overnight or certified mail to the individuals at the addresses specified below, or, where required via facsimile, to the facsimile numbers provided below, unless any such individual or such individual's successor gives notice in writing to the other party

that notice should be provided to a different individual, different address, or different facsimile number, or unless this Consent Decree specifically provides otherwise.

As to DOJ:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
DOJ No. 90-5-2-1-06111
Facsimile: (202) 616-2427

As to EPA Region I - New England:

Director
Office of Environmental Stewardship
U. S. Environmental Protection Agency (Region I - New England)
1 Congress Street, Suite 1100 (Mail Code SAA)
Boston, Massachusetts 02114-2023
Facsimile: (617) 918-1809

As to EPA Headquarters:

Director
Office of Enforcement and Compliance Assurance (OECA)
U. S. Environmental Protection Agency
Ariel Rios Building
Washington, D.C. 20460
Facsimile: (202) 564-0015

As to the United States Attorney, District of New Hampshire:

Gretchen Witt, Chief, Civil Division
United States Attorney General's Office
District of New Hampshire
Assistant United States Attorney
District of New Hampshire
55 Pleasant Street, Room 312
Concord, New Hampshire 03301

As to James Rymes, Individually:

James Rymes
c/o Rymes Heating Oils, Inc.
2 Main Street
Antrim, New Hampshire 03440

and

John E. Peltonen, Esquire
Sheehan Phinney Bass & Green
1000 Elm Street
P.O. Box 3701
Manchester, NH 03105-3701
Facsimile: 603-641-2334

As to Rymes Heating Oils, Inc.:

James Rymes, President
Rymes Heating Oils, Inc.
2 Main Street
Antrim, New Hampshire 03440
Facsimile:

and

John E. Peltonen, Esquire
Sheehan Phinney Bass & Green
1000 Elm Street
P.O. Box 3701
Manchester, NH 03105-3701
Facsimile: 603-641-2334

VII. Effect of Settlement

16. This Consent Decree constitutes a settlement by the Plaintiff of the civil judicial claims for the violations alleged in the Complaint through the date of lodging of this Consent Decree, specifically including: (a) all alleged RFG misdelivery and product transfer document violations under 40 C.F.R. §§ 80.78(a) and 80.79, and under 42 U.S.C. § 7545(k)(5) for the period January

1, 1995 through the date of lodging; and, (b) all alleged diesel misdelivery and misfueling violations under 40 C.F.R. §§ 80.29 and 80.30 and under 42 U.S.C. §§ 7545(i) and 7545(g)(2) relating to diesel fuel that Defendants sold, supplied, dispensed, or transported to NH DOT facilities for the period September 1, 1996 through the date of lodging. The United States reserves its rights with respect to, and this Consent Decree shall not constitute a release of or otherwise affect, any criminal liability that may arise from any facts, circumstances, or law at issue or in any way involved in this civil judicial action, or giving rise to this civil judicial action, or otherwise related to Rymes or Rymes Heating Oils. Except as specifically provided in this Consent Decree, Defendants do not waive, but rather specifically reserve, all defenses that would be available to them under the law should the United States choose to pursue further enforcement action based on the facts and circumstances involved in this civil penalty action.

17. Except as specifically provided herein, this Consent Decree shall not affect Defendants' obligations to comply with any requirements of the Act and its implementing regulations, or any other provisions of federal, state, or local law.

VIII. Reservation of Rights

18. Nothing in this Consent Decree shall be construed to limit any statutory or regulatory authorities, rights, remedies, or sanctions, or any equitable rights or remedies, available to the United States regarding (a) any violation of this Consent Decree, or (b) any violation of any federal, state, or local law, regulation, or permit, except as specifically provided in Paragraph 16. Except as specifically provided in this Consent decree, this Consent Decree shall not otherwise be construed to limit any common law, statutory or regulatory defense, right or remedy, or any equitable defense, right or remedy, available to the Defendants regarding any violation of federal,

state, or local law, regulation, or permit alleged by any federal, state or local government authority.

IX. General Provisions

19. Compliance with the terms of this Consent Decree does not guarantee compliance or excuse noncompliance with any applicable Federal, State or local law, regulation, or permit except as set forth below. Compliance with this Consent Decree shall not constitute a defense to any action pursuant to said laws, regulations or permits.

20. Until at least three years after the entry of this Consent Decree, Defendants shall preserve and retain all records and documents now in their possession or control, or which come into their possession or control, that relate in any manner to (a) the violations described in the Complaint and which are the subject of this Consent Decree or (b) the liability of any person with respect thereto.

21. Except as provided in this Consent Decree, the United States reserves any and all legal and equitable remedies, sanctions, and penalties which may be available to it to enforce the provisions of this Consent Decree, and further reserves the right to take any other action authorized by federal or federally enforceable State law, regulation, or permitting condition to achieve or maintain compliance with this Consent Decree.

22. Satisfaction of all the requirements of this Consent Decree constitutes full settlement of and shall resolve all civil liability of Defendants to the United States for all civil violations of Section 211 of the Act based on the facts described in the Complaint.

23. Except as described in Paragraph 13, each party shall bear its own costs, disbursements and attorney's fees in this action, and specifically waives any right to recover such costs,

disbursements or attorneys fees from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable statutes.

24. The headings used in this Consent Decree are for convenience only and do not affect or restrict the terms of this Consent Decree.

X. Termination

25. This Consent Decree shall terminate one (1) year after the date of its entry, or whenever all civil and stipulated penalties provided for in this Consent Decree have been paid, whichever is later.

XI. Entry

26. The Parties agree and acknowledge that final approval of this Consent Decree by the United States is subject to the public notice and comment requirements of 28 C.F.R. § 50.7 which requires, *inter alia*, notice of this Consent Decree and an opportunity for public comment.


Defendants agree to the entry of this Consent Decree without further notice.

27. Upon approval and entry, this Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure and the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001 et seq.

28. The Court finds that there is no just reason for delay and therefore enters this Consent Decree as a final judgment in this action.

JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE FOREGOING

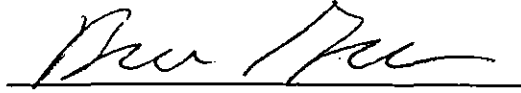
CONSENT DECREE THIS 5th DAY OF Devel, 2000.



UNITED STATES DISTRICT JUDGE

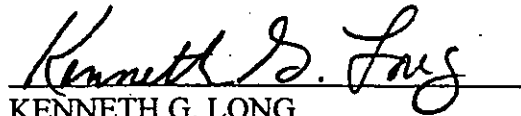
cc: Counsel of Record

FOR THE UNITED STATES OF AMERICA:



BRUCE GELBER
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U. S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

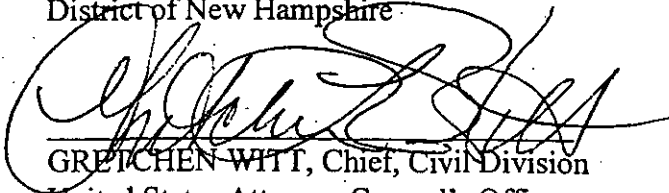
9/12/00
Date



KENNETH G. LONG
Trial Attorney
United States Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-4454

9/13/2000
Date

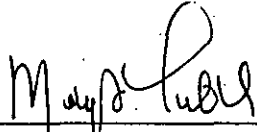
PAUL M. GAGNON
United States Attorney
District of New Hampshire



GRETCHEN WITT, Chief, Civil Division
United States Attorney General's Office
District of New Hampshire
Assistant United States Attorney
District of New Hampshire
55 Pleasant Street, Room 312
Concord, New Hampshire 03301

9/19/00
Date

FOR THE UNITED STATES OF AMERICA



MINDY S. LUBBER
Regional Administrator
EPA New England
1 Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

9-13-2000

DATE



HUGH W. MARTINEZ
Senior Enforcement Counsel
Office of Environmental Stewardship
EPA New England
1 Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

9-6-00


DATE

FOR THE UNITED STATES OF AMERICA



BRUCE C. BUCKHEIT
Director, Air Enforcement Division
Office of Regulatory Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

9-5-00
DATE

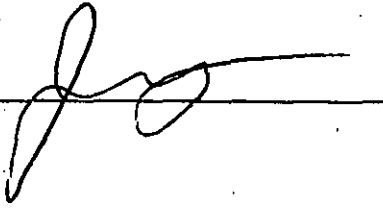


ANGELA E. FITZGERALD
Attorney- Advisor
Air Enforcement Division
Office of Regulatory Enforcement
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

9-1-00
DATE

FOR DEFENDANT, RYMES HEATING OILS, INC.:

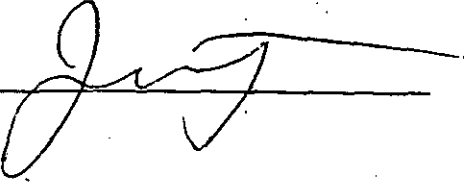
By:

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, written over a horizontal line.

Date

8/30/00

FOR DEFENDANT, JAMES RYMES, IN HIS INDIVIDUAL CAPACITY:

By: 

Date 8/30/00