

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

In the Matter of:)
)
Theodore Herring d/b/a)
West Nyack Service)
)
Respondent.)

SETTLEMENT AGREEMENT
AED/MSEB 5005

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Theodore Herring, d/b/a West Nyack Service, located at 155 Route 303, West Nyack, New York ("Respondent").

Preliminary Statement

1. On September 13, 1999, a Notice of violation ("Notice") was issued to Respondent for violation of § 211 of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). This law prohibits any person, including a retailer, from selling, dispensing, storing, supplying, offering for sale or supply, transporting, or causing the transportation of gasoline represented and intended for sale or use in any covered area unless such gasoline meets the applicable standards specified in 40 C.F.R. Part 80.41. This law also subjects violators 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. 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

3. The parties agree that the settlement of this matter, without further litigation, is in the public interest and that this Settlement Agreement ("Agreement") is the most appropriate means of resolving the matter.

4. By entering into this Agreement, Respondent does not admit that it is in any way responsible for the alleged violations or that any violations of law have occurred.

5. The parties stipulate and agree to the following matters. It is further agreed that these stipulations are applicable to this Agreement and any penalty proceeding arising out 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 8, 1998, a gasoline inspection was conducted at West Nyack Service, located in West Nyack, New York..

c. As a result of the inspection, EPA determined that mid-grade and premium gasoline, represented to be reformulated and intended for sale in a reformulated covered area, did not meet the applicable standards.

d. EPA and Respondent have entered into this Agreement in the spirit of compromise and to avoid litigation.

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.

6. After considering the gravity of the alleged violations and Respondent's history of compliance with the regulations, EPA has determined to remit and mitigate the civil penalty to two

thousand one hundred dollars (\$2,100), subject to successful completion of the terms of this Agreement.

Respondent agrees to pay \$2,100 to the United States of America in two equal installments. The first payment shall be due thirty (30) days from receipt of written notice that this Agreement is executed by EPA ("the first due date"). The second payment shall be due on July 1, 2000 ("the second due date"). Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay the amount by checks 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 5005

A photocopy of the checks shall be mailed simultaneously to:

David J. Gottfried, Esquire
U.S. Environmental Protection Agency
401 M Street, S.W. (2242A)
Washington, D.C. 20460
Attn: AED/MSEB 5005

7. Time is of the essence to this Agreement. Respondent's failure to timely pay the civil penalty amount specified in Paragraph 6 within 30 days following each due date shall be deemed a default. The parties further agree that upon any such default, a stipulated penalty of \$55,000 shall be due and owing. 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 pursue any other remedies available to it. Respondent specifically agrees that in the event of such default, EPA may proceed in an action based on the original claim of violation of section 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.

8. This agreement becomes effective upon the date accepted by EPA, at which time a copy will be returned to Respondent.

9. Respondent hereby represents that the individual executing this Agreement on behalf of Respondent are authorized to do so and that such execution is intended and is sufficient to bind Respondent.

10. For purposes of this Agreement, in addition to the waivers specifically set forth in Paragraph 7 hereof, Respondent waives its right, if any, to object to EPA's jurisdiction to settle this matter.

11. Except as expressly set forth in paragraphs 7 and 10 hereof, the terms of this Settlement Agreement shall not be construed as waiving, barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or defenses that the Respondent may have.

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. Timely payment of the payment amount specified in Paragraphs 6 and 7 hereof and any stipulated penalties and interest due under this Settlement Agreement shall constitute full and final settlement and satisfaction of this matter; and, upon EPA's receipt of such payment, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent if the gasoline sample taken by Caleb is determined to be out of compliance or

in the event of default or noncompliance with this 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:

Theodore Herring d/b/a West Nyack Service.

by: Theodore Herring
Theodore Herring

Date: 12-21-99

United States
Environmental Protection Agency

by: Richard Biondi/t
Bruce C. Buckheit, Director
Air Enforcement Division

Date: 1-13-00