

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

**In the matter of:**

Swifty Oil Company, Inc.

and

Swifty Transportation, Inc.

Respondents

File Nos.       AED/MSEB - 7016  
                    AED/MSEB - 7017

SETTLEMENT AGREEMENT AND  
AUDIT POLICY DETERMINATION

**THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (“EPA”), Swifty Oil Company, Inc. (“Swifty”) and Swifty Transportation, Inc. (“STI”). Swifty and STI (“Respondents”) are two separate companies, located at P.O. Box 1002, Seymour, Indiana 47274.**

**Preliminary Statement**

1. On September 30, 2002, Respondents provided written notifications to EPA of violations of the gasoline volatility regulations promulgated at 40 C.F.R. Part 80, Subpart B (“Volatility Regulations”). In these disclosures, Respondents informed EPA that STI distributed and Swifty sold approximately 8,507 gallons of conventional gasoline that exceeded the volatility standards at Store #257 and Store #261, which are located in an area subject to the 7.8 pounds per square inch (“psi”) Reid vapor pressure (“RVP”) standard. Respondents requested application of EPA’s Final Policy Statement entitled “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations” (65 Fed. Reg. 19618) (“Audit Policy”).

2. Pursuant to section 211(d) of the Clean Air Act (“Act”), 42 U.S.C. § 7545(d), the statutory civil penalty for each of these violations is an amount up to twenty-seven thousand five hundred dollars (\$27,500) per day, and the amount of economic benefit or savings resulting from each violation.

### **EPA's Audit Policy Determination**

3. EPA issued the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties; however, EPA retains its discretion to recover any economic benefit gained as a result of non-compliance.

4. The Audit Policy sets forth the following nine conditions:

- a. systematic discovery of the violations occurred through an environmental audit or compliance management system;
- b. the violations were voluntarily discovered;
- c. the violations were promptly disclosed;
- d. discovery and disclosure of the violations were independent of prior actions of the government or third-party plaintiff;
- e. the violations were corrected and the environmental harm was remedied;
- f. steps were taken to prevent recurrence;
- g. the violations were not a repeat violation;
- h. the violations were not a specific serious violation excluded under the Audit Policy; and
- i. the violator has cooperated with EPA about the matter.

5. Where the disclosing party establishes that it satisfies all of the conditions set forth in the Audit Policy, EPA will not seek gravity-based civil penalties. Where the disclosing party

establishes that it satisfies all of the conditions except for the first condition, systematic discovery, the disclosing party is eligible for a seventy-five percent (75%) reduction of the gravity-based civil penalties.

6. Upon the consideration of relevant information about these violations, EPA concludes that Respondents have satisfied all the above conditions, except for systematic discovery of the violations.

7. Applying the Audit Policy and contingent upon the truthfulness and accuracy of the information provided by the Respondents, seventy-five percent (75%) of the gravity-based penalties for these violations will be eliminated by EPA. Under the terms of the Audit Policy, the Respondents' penalties based on economic benefit will not be eliminated.

8. After considering the gravity of the violations, Respondents' history of compliance, the terms of this Agreement, other facts presented by the Respondents, and the application of the Audit Policy to this case, EPA has determined to conditionally remit and mitigate the civil penalty for Swifty's violation of the Volatility Regulations to one thousand five hundred twenty dollars (\$1,520), and to conditionally remit and mitigate the civil penalty for STI's violation of the Volatility Regulations to seven hundred fifty dollars (\$750). This civil penalty reflects a seventy-five percent (75%) reduction of the gravity-based component of the civil penalty.

### **Terms of Agreement**

9. 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.

10. The parties 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.

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

12. Swifty agrees to pay one thousand five hundred twenty dollars (\$1,520) and STI agrees to pay seven hundred fifty dollars (\$750) within thirty days of receipt of the signed

Settlement Agreement from EPA (“penalty due date”). Late payment of this civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717.

13. Swifty agrees to pay the one thousand five hundred twenty dollar (\$1,520) penalty and STI agrees to pay seven hundred fifty dollars (\$750) penalty required by paragraph 12 of this Agreement by cashier’s check or certified check payable to the “United States of America.” Swifty shall include the notation “AED/MSEB – 7016,” and STI shall include the notation “AED/MSEB – 7017” on their certified checks. The penalty is to be mailed to the following address:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, PA 15251  
Attention: AED/MSEB - 7016 and 7017, respectively

A copy of the penalty check shall be simultaneously forwarded to Jeffrey A. Kodish at the following address:

Jeffrey A. Kodish  
U.S. Environmental Protection Agency  
12345 W. Alameda Parkway, Suite 214  
Denver, CO 80228

14. Time is of the essence to this Agreement. Upon the Respondents’ failure to timely pay pursuant to paragraphs 12 and 13 of this Agreement, the parties agree that the following remedies become available to EPA:

- a. EPA may commence an action to enforce this Agreement.
- b. In the event of such default or failure to comply, or of the established inaccuracy or lack of truthfulness of the information supplied by Respondents about the violations, EPA may pursue any other legal remedies available to it. This includes proceeding in an action based on the original claim of violations of section 211 of the Act, 42 U.S.C. § 7545, and Respondents expressly waive their 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.

c. If Respondents fail to pay the penalties identified in paragraphs 12 and 13 of this agreement within ninety days of the penalty due date, they owe a stipulated penalty to EPA of twenty-seven thousand five hundred dollars (\$27,500) (“stipulated penalty”). Once the stipulated penalty becomes due, EPA may bring an action against the Respondents to recover the stipulated penalty.

15. Consistent with the purposes of the Audit Policy, Respondents agree, on a continuing and company-wide basis, to institute internal policies and procedures to prevent recurrence of violations of the volatility regulations. These policies and procedures shall include, but not be limited to, implementing the procedures identified in Respondents’ self-disclosures. Swifty also agrees to promptly implement a policy that requires members of its store management teams to check product transfer documents to ensure that the gasoline that it sells meets the applicable RVP standards.

16. This Agreement becomes effective upon the date signed by EPA, after which time a copy will be returned to Respondents.

17. The parties hereby represent that the individual(s) executing this Agreement on behalf of the respective parties are authorized to do so and that such execution is intended and is sufficient to bind the parties and, when applicable, its officers, agents, directors, owners, heirs, assigns, and successors.

18. Respondents waive their rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to matters agreed to herein.

19. The terms of this Settlement Agreement and Audit Policy Determination shall be the complete settlement of all civil administrative claims and causes of action for violations identified in the September 30, 2002, Notifications from Respondents. Respondents’ full completion of the terms of this Agreement shall terminate this matter, with, however, such termination being contingent upon the accuracy and truthfulness of the information provided about the violations by the Respondents.

20. Nothing herein shall limit the right of EPA to proceed against the Respondents in the event of default or noncompliance with this Agreement; for violations of section 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.

21. 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.

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

The following agree to the terms of this Agreement:

**Swifty Oil Company, Inc.**

by: William R. Klinger Date: 12/01/03  
(Printed Name:) William R. Klinger  
(Printed Title:) President & CFO

**Swifty Transportation, Inc.**

By: Don R. Smith, Sr. Date: 12/01/03  
(Printed Name:) Don R. Smith, Sr.  
(Printed Title:) President

**United States  
Environmental Protection Agency**

by: Adam Kuhnert Date: 1/28/04  
~~Bruce A. Buckheit~~ Adam Kuhnert  
Acting Director, Air Enforcement Division  
Office of Enforcement and Compliance Assurance