

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.

In the matter of:)
SIMONEAU SERVICE) File No. MSEB/AED - 4892
Respondent) SETTLEMENT AGREEMENT
_____)

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and SIMONEAU SERVICE, located at 13785 West North Avenue, Brookfield, Wisconsin, (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 1, 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).

2. 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 1, 1998, a reformulated gasoline survey was conducted at Simoneau Service retail facility located at 13785 West North Avenue, Brookfield, Wisconsin. During the inspection, the inspectors took a sample of 87 octane gasoline being sold and offered for sale at the facility. Laboratory analysis determined that the gasoline had a VOC emission performance reduction of 10.1 percent, which fails to meet the minimum VOC emissions performance reduction of 13.1 percent.

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 Six Hundred Dollars (\$600) pending successful completion of the terms of this Agreement. Respondent agrees to pay Six Hundred Dollars (\$600) in three installments beginning within thirty days of receipt of a signed settlement agreement from EPA. The installments are due in the following amounts and on the following dates:

- a. The first payment of \$200.00 is due within thirty days of receipt of a signed settlement agreement from EPA,
- b. The second payment of \$200.00 is due within sixty days of receipt of a signed settlement agreement from EPA, and

c. The third payment of \$200.00 is due within ninety 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 - 4892

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

U.S. Environmental Protection Agency
2242A
401 M Street, SW
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:

Simoneau Service
by: Lee Simoneau Date: 10.5.99
Lee Simoneau, Owner
Simoneau Service

United States
Environmental Protection Agency

by: Bruce C. Buckheit Date: 10/13/99
Bruce C. Buckheit, Director
Air Enforcement Division