

IN THE MATTER OF**SETTLEMENT AGREEMENT****Aloia Enterprises, Inc. d/b/a The Corner Market**

This Settlement Agreement is entered into by Roy Cooper, Attorney General of the State of North Carolina (hereinafter "Attorney General"), and Aloia Enterprises, Inc. d/b/a The Corner Market (hereinafter "The Corner Market").

I. FACTUAL BACKGROUND

1. Aloia Enterprises, Inc. is a corporation formed and existing under the laws of the State of North Carolina.
2. The Corner Market operates a retail gasoline outlet station located at 1462 US Highway 221 North, Jefferson, North Carolina.
3. On September 12, 2008, Governor Michael F. Easley declared the existence of an "abnormal market disruption" pursuant to G.S. § 75-38 (hereinafter the "Declaration"). Such a Declaration is intended to prevent sellers of goods and services from charging "unreasonably excessive" prices for those goods or services under the conditions outlined in the statute.
4. The Attorney General received numerous allegations of unreasonably excessive pricing following the Declaration and undertook an investigation. At the request of the Attorney General, The Corner Market and its supplier produced records which disclosed its cost, pricing and sales volume information for the period prior to and following the Declaration.
5. The Corner Market and its supplier operate on a profit sharing basis whereby they divide the profits above the "base cost" that is established by the supplier on each Wednesday

for the following week. On September 12, 2008, The Corner Market was selling regular gasoline for \$3.699, mid-grade for \$3.809, and premium for 3.919 per gallon. At those prices the combined gross profit margin per gallon of The Corner Market and its supplier was \$0.124 for regular, or a 3.5 percent markup; \$0.17 for mid-grade, or a 4.7 percent markup; and \$0.11 for premium, or a 2.9 percent markup. It then raised its prices to \$3.999 for regular, \$4.199 for mid-grade and \$4.299 for premium.

6. Later on September 12, 2008, The Corner Market further increased its price to \$5.2999 per gallon for regular gasoline for which the base cost from its supplier was ~~\$3.575~~ ^{3.69} per gallon. The combined margin of The Corner Market and its supplier for regular gasoline sold on September 12, 2008 was \$1.724 per gallon, a 48 percent mark up. ^{86.2}
7. On September 12, 2008, The Corner Market increased its price to \$5.499 for mid-grade gasoline for which the base cost was \$3.639. The margin for mid-grade gasoline sold on September 12, 2008 was \$1.86 per gallon, a 51 percent mark up.
8. On September 12, 2008, The Corner Market increased its price to \$5.599 for super grade gasoline for which the base cost was \$3.809. The margin for super grade gasoline sold on September 12, 2008 was \$1.6764 per gallon, a 44 percent mark up.
9. The Corner Market ceased selling gasoline from the afternoon of September 12 until it got a shipment on September 16.
10. The Attorney General contends that the prices of \$5.29 and higher charged by The Corner Market on September 12, 2008 constituted unreasonably excessive prices.
11. The Attorney General contends that to the extent mark-up exceeded \$0.124 per gallon for regular, \$0.17 per gallon for mid-grade, and \$0.11 per gallon for premium during the

relevant time period, the prices charged by The Corner Market were excessive.

12. During the relevant time period, The Corner Market overcharged by \$1.60 per gallon for 959 gallons of regular gasoline. The total overcharge for regular gasoline during the relevant time period was \$1,534.
13. During the relevant time period, The Corner Market overcharged by \$1.69 per gallon for 42 gallons of mid-grade gasoline. The total overcharge for mid-grade gasoline during the relevant time period was \$70.98.
14. During the relevant time period, The Corner Market overcharged by \$1.68 per gallon for 51 gallons of premium gasoline. The total overcharge for premium gasoline during the relevant time period was \$85.68.
15. The Attorney General and The Corner Market are desirous of entering into this Settlement Agreement to resolve the allegations of excessive pricing.

SETTLEMENT PROVISIONS

16. The Corner Market shall make restitution to consumers in the sum of \$1,690.66, which represents the total of the overcharges alleged by the Attorney General for regular, mid-grade and premium gasoline. Said restitution will be distributed in the following manner:
 4. The Corner Market, within thirty (30) days of the execution of this Settlement Agreement, shall identify all credit card and debit card customers who purchased gasoline during the relevant time period and credit a refund to their credit cards in the amount of overcharge per gallon times the number of gallons that they purchased. The Corner Market shall refund the same amounts per gallon to every

consumer who presents, within thirty (30) days of the execution of this Settlement Agreement, a cash receipt or other proof of purchase demonstrating a purchase within the relevant period.

- b. The Corner Market, within sixty (60) days of the execution of this Settlement Agreement, shall provide the Attorney General with a sworn accounting of all refunds made pursuant to paragraph 16(a). The accounting shall include the name, address and amount of refund for each consumer. The Corner Market, contemporaneously with the accounting, shall pay to the Attorney General the difference between \$1,690.66 and the amount the accounting shows was distributed to consumers. This payment shall be made to the Attorney General via a certified check made payable to the "North Carolina Department of Justice." The Attorney General shall provide this amount to the Low Income Heat and Energy Assistance Program (LIHEAP) to be used for energy assistance in the county where the overcharges occurred.
17. Contemporaneously with the signing of this Settlement Agreement, The Corner Market shall pay to the Attorney General \$5,000.00 as a civil penalty pursuant to N.C. Gen. Stat. § 75-15.2, and \$169.00 for the Department of Justice's investigative costs. These payments shall be made to the Attorney General via a certified check made payable to the "North Carolina Department of Justice."
18. The Corner Market acknowledges that it is fully aware of the terms of N.C. Gen. Stat. § 75-38, a copy of which is attached hereto as "Attachment A," and agrees to abide by the statute in all future business transactions.

- 19. By executing this Agreement, and in consideration of The Corner Market's undertakings set forth herein, the Attorney General agrees not to institute any suit or enforcement proceeding against The Corner Market with respect to alleged unreasonably excessive pricing during the relevant time period. The Corner Market, however, acknowledges that this Settlement Agreement is based upon information that it has provided to the Attorney General. If any of the information provided to the Attorney General by The Corner Market is shown to be false or incomplete, the Attorney General shall retain the right to pursue legal action concerning overcharges at The Corner Market based on other information. The Attorney General further retains the right to pursue legal action concerning overcharges at any other location owned or operated by The Corner Market.
- 20. Should The Corner Market fail to comply with any of the provisions of this Settlement Agreement, it agrees to pay a stipulated penalty of \$5,000 per violation.

THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS MATTER, HEREBY CONSENT TO THE FORM AND CONTENTS OF THE FOREGOING SETTLEMENT AGREEMENT.

Signed this 27th of Oct., 2008.

**Aloia Enterprises Inc. d/b/a
The Corner Market**

By: 
Michael Aloia, President

**ROY COOPER
Attorney General**

By: 
**K.D. Sturgis
Assistant Attorney General**

Attachment A

§ 75-38. Prohibit excessive pricing during states of disaster, states of emergency, or abnormal market disruptions

(a) Upon a triggering event, it is prohibited and shall be a violation of G.S. 75-1.1 for any person to sell or rent or offer to sell or rent any goods or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances. This prohibition shall apply to all parties in the chain of distribution, including, but not limited to, a manufacturer, supplier, wholesaler, distributor, or retail seller of goods or services. This prohibition shall apply in the area where the state of disaster or emergency has been declared or the abnormal market disruption has been found.

In determining whether a price is unreasonably excessive, it shall be considered whether:

(1) The price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the triggering event.

(2) The price charged by the seller exceeds the seller's average price in the preceding 60 days before the triggering event. If the seller did not sell or rent or offer to sell or rent the goods or service in question prior to the time of the triggering event, the price at which the goods or service was generally available in the trade area shall be used as a factor in determining if the seller is charging an unreasonably excessive price.

(3) The price charged by the seller is attributable to fluctuations in applicable commodity markets; fluctuations in applicable regional, national, or international market trends; or to reasonable expenses and charges for attendant business risk incurred in procuring or selling the goods or services.

(b) In the event the Attorney General investigates a complaint for a violation of this section and determines that the seller has not violated the provisions of this section and if the seller so requests, the Attorney General shall promptly issue a signed statement indicating that the Attorney General has not found a violation of this section.

(c) For the purposes of this section, the end of a triggering event is the earlier of 45 days after the triggering event occurs or the expiration or termination of the triggering event unless the prohibition is specifically extended by the Governor.

(d) A "triggering event" means the declaration of a state of emergency pursuant to G.S. 166A-8 or Article 36A of Chapter 14 of the General Statutes, the proclamation of a state of disaster pursuant to G.S. 166A-6, or a finding of abnormal market disruption pursuant to G.S. 75-38(e).

(e) An "abnormal market disruption" means a significant disruption, whether actual or imminent, to the production, distribution, or sale of goods and services in North Carolina, which are consumed or used as a direct result of an emergency or used to preserve, protect, or sustain life, health, safety, or economic well-being of a person or his or her property. A significant disruption may result from a natural disaster, weather, acts of nature, strike, power or energy failures or shortages, civil disorder, war, terrorist attack, national or local emergency, or other extraordinary adverse circumstances. A significant market disruption can be found only if a declaration of a state of emergency, state of disaster, or similar declaration is made by the President of the United States or an issuance of Code Red/Severe Risk of Attack in the Homeland Security Advisory System is made by the Department of Homeland Security, whether or not such declaration or issuance applies to North Carolina.

(f) The existence of an abnormal market disruption shall be found and declared by the Governor pursuant to the definition in subsection (e) of this section. The duration of an abnormal market disruption shall be 45 days from the triggering event, but may be renewed by the Governor if the Governor finds and declares the disruption continues to affect the economic well-being of North Carolinians beyond the initial 45-day period.