

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

In the Matter of:)
)
John Duffy Fuel Company)
)
)
Respondent.)

SETTLEMENT AGREEMENT
AED/MSEB 4884

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency ("EPA") and John Duffy Fuel Company, located at 156 Adams Street, Newark, New Jersey ("Respondent").

Preliminary Statement

1. On June 29, 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 a distributor from introducing into commerce, selling, offering for sale, supplying, dispensing, offering for supply or transport any diesel fuel for use in motor vehicles unless the diesel fuel has a sulfur content no greater than 0.05 percent. This law subjects violators to a maximum civil penalty of \$27,500 per day for each violation and the amount of economic benefit or savings resulting from the violation. Section 211(g)(2) of the Act prohibits any person from introducing or causing or allowing the introduction into any motor vehicle diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 percent after October 1, 1993. This law also subjects violators to a maximum civil penalty of \$27,500.

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 distributor as defined within the meaning of 40 C.F.R. § 80.2.

b. In November and December 1996, EPA inspected motor vehicles and diesel fuel storage tanks owned and operated by the New Jersey Department of Transportation and exclusively supplied by Respondent.

c. As a result of the inspection and subsequent investigation, EPA alleges that Respondent supplied nine diesel storage tanks with fuel that does not meet the standard and caused the introduction of non-complying fuel into eighteen motor vehicles.

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 seventy-five thousand dollars (\$75,000), subject to successful completion of the terms of this Agreement.

Respondent agrees to pay \$75,000 to the United States of America in three equal installments. The first payment shall be due sixty (60) days from receipt of written notice that

this Agreement is executed by EPA ("the first due date"). The second payment shall be due on January 1, 2001 ("the second due date"). The third payment shall be due on January 1, 2002 ("the third 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 4884

A photocopy of each check 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 4884

7. Time is of the essence to this Agreement. Respondent's failure to timely pay the payment 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, 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 is 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 Sections 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.

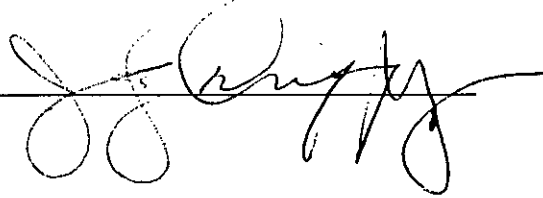
13. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

14. Timely payment of the payment amount specified in Paragraph 6 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. Based on the veracity of Respondent's assertion in paragraph 5(f), this Agreement resolves all product transfer document issues through the date of this Agreement. Nothing herein shall limit the right of EPA to proceed against Respondent 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:

John Duffy Fuel Company

by: _____

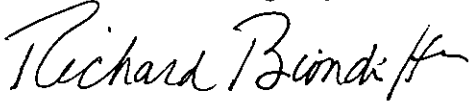
A handwritten signature in black ink, appearing to read "John Duffy", written over a horizontal line.

Date: _____

1/5/00

United States
Environmental Protection Agency

by: _____

A handwritten signature in black ink, appearing to read "Richard Buckheit", written over a horizontal line.

Bruce C. Buckheit, Director
Air Enforcement Division

Date: _____

1/13/00