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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.

In the Matter of:)	
S. WILKOFF & SONS COMPANY)	File No. AED/MSEB - 4963
Respondent.)	SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereinafter "EPA") and S. Wilkoff & Sons Company (hereinafter the "Respondent") located at 2700 East 47th Street, Cleveland, Ohio 44104.

A. Preliminary Statement

1. On November 5, 1999, a Notice of Violation was received by Respondent alleging that the Respondent violated section 211 of the Clean Air Act ("the Act"); 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80. The Notice stated that on or before December 8, 1998, diesel fuel which was dispensed at Respondent's wholesale purchaser-consumer facility (located at 2700 East 47th Street, Cleveland, Ohio) for use in equipment had a sulfur content of greater than 0.05% by weight. The Notice stated further that Respondent introduced or

caused or allowed the introduction of diesel fuel into an off-road motor vehicle which contained a sulfur concentration in excess of 0.05% by weight.

2. After considering the gravity of the alleged violation, the size of Respondent's business, and the Respondent's history of compliance under the fuels regulations, the EPA proposed in the Notice a civil penalty of Three Thousand Dollars (\$3,000) (hereinafter "the proposed penalty").

3. 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 a 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 wholesale purchaser-consumer 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. Without cause and for no reason on December 8, 1998, inspectors hired by the EPA inspected the S. Wilkoff & Sons Company facility located at 2700 East 47th Street, Cleveland, Ohio. During the voluntary inspection of six vehicles, the inspectors took a sample of diesel fuel from the propulsion tank of six (6) off-road motor vehicle(s) at the Respondent's facility. The EPA considers two of these vehicles to be out of compliance since they are trucks that were built to be driven on a highway. These vehicles were unlicensed and were used only on Wilkoff's property. They are used rarely and when used travel less than one mile per day.

c. Upon realization of the diesel sulfur violation, Respondent took immediate steps to bring the diesel fuel in the propulsion tanks of its vehicles into compliance with the Clean Air Act (hereinafter "the Act"). In addition, Respondent implemented a policy to prevent future violations from occurring.

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 One Thousand Eight Hundred Dollars (\$1,800) pending successful completion of the terms of this Agreement. The Respondent agrees

to pay One Thousand Eight Hundred Dollars (\$1,800). The due date shall be thirty (30) days from the date Respondent receives signed Agreement from the EPA. Late payment of this civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. The Respondent agrees to pay the amount due by company 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 - 4963

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

U.S. Environmental Protection Agency
Western Field Office
12345 West Alameda Parkway, Suite 214
Denver, CO 80228

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 entire proposed civil penalty of Three Thousand Dollars (\$3,000) shall be immediately due and owing.

5. This Agreement becomes effective upon the date Respondent receives signed Agreement from the EPA.

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 and its officers.

AND EPA
7. The Respondent, ^{THEIR} 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 *AND ITS AMENDMENTS*

S. WILKOFF & SONS COMPANY

by: 
William J. Wilkoff
S. Wilkoff & Sons Company

Date: 11-5-99

United States
Environmental Protection Agency

by: Bruce C. Buckheit
Bruce C. Buckheit, Director
Air Enforcement Division

Date: 8/28/00