

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

	)	
<b>In the Matter of:</b>	)	
	)	Administrative Settlement
<b>Apex Oil Company, Inc.</b>	)	Agreement
	)	AED/MSEB # 7754
<b>Respondent.</b>	)	

This Administrative Settlement Agreement (ASA) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Apex Oil Company, Inc., (Respondent) regarding Respondent's compliance with the requirements of the Clean Air Act (the Act) and the regulations promulgated thereunder at 40 C.F.R. Part 80, Subpart I (regulations).

**Purpose:**

1. The purpose of this ASA is to resolve alleged noncompliance by Respondent with the requirements of the Act and the diesel sulfur rules.

**Statutory and Regulatory Authority:**

2. EPA promulgated the diesel sulfur rules pursuant to Sections 211(c) and 211(i) of the Act, 42 U.S.C. § 7545(c) and (i).
3. The diesel sulfur rules are part of a comprehensive national program that greatly reduces emissions from diesel engines by integrating engine and fuel controls.
4. The fuel delivery in this case was made in New York, which is part of the northeast mid-atlantic area (NEMA) of the United States, as defined in 40 C.F.R. § 80.510(g)(1).

5. 40 C.F.R. § 80.520(a) and 40 C.F.R. § 80.524 subject motor vehicle diesel fuel sold or dispensed in the NEMA to a per-gallon maximum sulfur content of 15 parts per million (ppm).
6. 40 C.F.R. § 80.590 requires distributors to provide the transferee of motor vehicle diesel fuel with an accurate statement on the product transfer documents of the applicable fuel uses and classifications.

**Background**

7. On June 10, 2009, EPA issued a Notice of Violation File No. AED/MSEB #7754 (NOV) to Respondent alleging that Respondent violated section 211 of the Act, 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80.
8. EPA alleged in the NOV that Respondent violated the following regulations:
  - a. 40 C.F.R. § 80.610(a)(1) by supplying and or transporting 1,504 gallons of diesel fuel that failed to comply with the 15 ppm sulfur content standard set forth in 40 C.F.R. § 80.520(a); and
  - b. 40 C.F.R. § 80.610(a)(1) by not providing an accurate statement on the product transfer documents of the applicable fuel uses and classifications as required by 40 C.F.R. § 80.590.
9. EPA and the Respondent (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 the Agreement and Civil Penalty:**

10. In any enforcement or penalty action arising out of this ASA or the subject matter of this ASA:

- a. The Parties agree that the settlement of this matter is in the public interest and that this ASA is the most appropriate means of resolving the matter; and
- b. The Parties further agree that 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.

11. By entering into this ASA, Respondent neither admits nor denies that any violations have, in fact, occurred.

12. Respondent shall engage consultants to audit each of its terminals regarding compliance with the applicable fuel regulations. Respondent shall also develop and implement a comprehensive compliance plan and procedures to ensure compliance with the fuel regulations in the future.

13. Respondent shall pay a civil penalty of \$30,000 to the United States of America within thirty (30) calendar days of the effective date of this Agreement (penalty due date), but not before the effective date. Late payment of the penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent shall pay the amount by either:

- a. Certified check or cashier's check payable to the "United States of America," and mailed via the United States Postal Service to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

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Simultaneously, Respondent shall fax a photocopy of the check to (303) 312-6003 to the attention of Natalie Firestine. Respondent shall identify the check with the case number and Respondent's name; or

- b. Respondent may make an online payment through the Department of the Treasury by visiting [WWW.PAY.GOV](http://WWW.PAY.GOV). In the "Search Public Forms" field, enter "SFO 1.1", click "EPA Miscellaneous Payments - Cincinnati Finance Center" and complete the "SFO Form Number 1.1." Within twenty-four hours of payment, Respondent shall fax a copy of the online payment receipt to Natalie Firestine at (303) 312-6003.

**Stipulated Penalties:**

14. Respondent shall pay stipulated penalties of \$1,000 per day for failure to timely pay the penalty, or provide proof thereof, pursuant to Paragraph 14.

**General Provisions:**

15. This ASA becomes effective upon the date executed by EPA (effective date of the ASA), at which time a copy will be returned to Respondent.
16. Notwithstanding any other provision of this ASA, upon default or failure of Respondent to comply with the terms of this ASA, EPA may refer this matter to the United States Attorney General for collection pursuant to section 205(c) of the Act, 42 U.S.C. § 7524(c), commence an action to enforce this ASA or to recover the civil penalty pursuant to section 205 of the Act, or pursue any other remedies available to it. 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. Respondent acknowledges that its tax identification number may be used for the purpose of collecting or reporting any delinquent monetary obligation arising from this ASA. (See 31 U.S.C. § 7701.)

17. Respondent represents that the individual or individuals executing this ASA on behalf of Respondent are authorized to do so and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.
18. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters consented to herein.
19. The validity, enforceability, and construction of all matters pertaining to this ASA shall be determined in accordance with applicable federal law.
20. This ASA is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this ASA.


**Effect of Agreement:**

21. Upon completion of the terms of this ASA, the alleged violations described in this ASA shall be deemed resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this ASA for violations of Section 211 of the Act, 42 U.S.C. § 7545, which are not the subject matter of this ASA, for other violations of law, or with respect to other matters not within the scope of the ASA. This ASA in no way affects or relieves Respondent of its responsibility to comply with other state, federal, or local laws or regulations.

*Administrative Settlement Agreement – In the Matter of Apex Oil Company, Inc. -  
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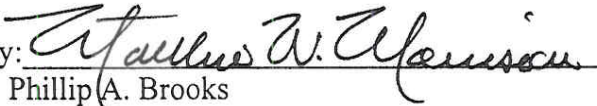
The following agree to the terms of this Agreement:

**Apex Oil Company, Inc.**

By:  Date: 3/9/2010  
Typed or Printed Name: John L. Hank, Jr.  
Typed or Printed Title: Vice President  
Federal Tax Identification Number: 43-1530508

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**United States Environmental Protection Agency**

By:   
for Phillip A. Brooks  
Director  
Air Enforcement Division

Date: 3/31/10