



plus the amount of the economic benefit or savings resulting from the violation.

2. After considering the gravity of the alleged violation, Respondent's history of compliance with the regulations, and the size of Respondent's business, EPA proposed in the Notice a civil penalty of One Thousand Five Hundred Dollars (\$1,500) ("the proposed penalty").

3. 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

4. The parties agree that the settlement of this matter is in the public interest and that this Settlement Agreement ("Agreement") is the most appropriate means of resolving the matter.

5. The parties stipulate and agree to the following facts. It is further agreed that these stipulations are applicable to this Agreement and any enforcement or penalty proceeding arising out of this Agreement or the subject matter of this Agreement:

a. As a result of an EPA investigation of the sulfur content of diesel fuel intended for use in motor vehicles, EPA determined that the fuel in the saddle tanks of respondent's truck #4 had a sulfur content of .0916% by weight, in excess of the .05% permitted by 40 C.F.R. §80.29, and the fuel in the saddle tanks had visible evidence of red dye. EPA determined that this

constitutes a violation of 40 C.F.R. 80.29. Respondent does not admit or deny these facts, or that a violation occurred.

b. Respondent has improved its awareness of the prohibition on introducing diesel fuel with evidence of red dye into commerce for use in motor vehicles, or using such fuel in motor vehicles.

c. Jurisdiction to settle this matter exists pursuant to § 211 of the Clean Air Act, 42 U.S.C. § 7544, 40 C.F.R. § 80.20, and other provisions of law.

6. After considering the gravity of the alleged violation, Respondent's history of compliance with § 211(i) of the Act, the circumstances of this case, the terms of this Agreement, and other facts presented by Respondent, the parties have agreed to settle this matter in accordance with the following terms:

a. Respondent agrees to pay one thousand five hundred dollars (\$1,500) to the United States of America.

b. The due date for payment shall be sixty (60) days from the date Respondent receives a fully executed copy of this Agreement ("the due date"). As noted in paragraph seven below, time is of the essence.

c. In accordance with section 3717 of the Debt Collection Act of 1982, 31 U.S.C. §3717, if the debt is not entirely 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 Twenty Dollars (\$20.00) will also be imposed if the amount due is not paid by the due date, with an additional charge of Ten Dollars (\$10.00) for each additional thirty (30) day period.

d. Respondent agrees to pay the amount by certified check or cashier's check payable to the "United States of America," and to mail the payment to:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
Attn: AED/MSEB 4840

A photocopy of the check shall be mailed simultaneously to:

David E. Alexander  
U.S. Environmental Protection Agency  
Mobile Source Enforcement Branch  
Air Enforcement Division (2242A)  
401 M Street, S.W.  
Washington, D.C. 20460  
Attn: AED/MSEB. 4840

7. Time is of the essence to this Agreement. If Respondent does not pay the amount specified in paragraph 6(a), OR if respondent pays the amount specified in paragraph 6(a) more than one hundred twenty (120) days after the date specified in paragraph 6(b) or upon Respondent's default or failure to comply with any other term of this Settlement Agreement, the statutory penalty of twenty five thousand dollars (\$25,000) ("The New Debt Amount") shall be immediately due and owed as a debt. The interest charges and other penalties and fees specified in paragraph 6(c) shall be applied to the new debt amount starting 180 calendar days after the the date respondent receives a signed

copy of this agreement and will continue to accrue until the New Debt Amount is paid in full. The parties agree that upon such default or failure to comply, EPA, at its sole discretion, may commence an action to enforce this Settlement Agreement for the New Debt Amount or may proceed in an action based on the original claim of violations of section 211 of the Act, 42 U.S.C. § 7545 and seek \$25,000 per day per violation plus economic benefit, and EPA may pursue any other remedies available to it. Respondent expressly waives its right to assert that any action under this paragraph 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 on the date accepted by EPA as indicated by the signature of an authorized official of EPA. Notwithstanding the forgoing while waiting for the copy signed by the EPA, Respondent irrevocably waives the right to renounce this agreement from the date of Respondents signature until the date 120 days after the duly signed agreement is actually received by the Air Enforcement Division at EPA. A copy of the executed agreement will be forwarded to Respondent.

9. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution is intended and is sufficient to bind Respondent, its officer, agents, directors, owners, heirs, assigns and successors.

10. Subject to the provisions of paragraph 7, above,

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.

11. 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.

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

13. Upon timely payment of the amount specified in 6(a) this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent for violations of section 211(k) of the Clean Air Act, 42 U.S.C. §7545(k), which are not the subject matter of this Agreement, or for any other violations of law.

The following agree to the terms of this Agreement:

JOHNS FUEL OIL, INC.

By *John Fortin*  
Printed Name: John Fortin  
Printed Title: President

Date: 10/1/98

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

By *Bruce Buckheit*  
Bruce Buckheit, Director  
Air Enforcement Division

Date: 12/18/98