

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C.

In the Matter of:)	
)	
THE INDUSTRIAL COMPANY)	File No. AED/MSEB - 4743
)	
Respondent.)	SETTLEMENT AGREEMENT
)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereinafter "EPA") and The Industrial Company (hereinafter the "Respondent" or "TIC").

A. Preliminary Statement

1. On October 15, 1997, a Notice of Violations (NOV) was issued to the 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 March 12, 1997, EPA inspectors inspected the TIC facility at the Kennecott Mine, Magna, Utah for compliance with the diesel fuel rule (sections 80.29 and 80.30). The inspectors determined that diesel fuel with a sulfur content exceeding 0.05 weight percent sulfur was introduced into three motor vehicles operated by the Respondent at the mine site. The Notice also stated that the Respondent, as the diesel fuel wholesale purchaser-consumer, is liable for these violations pursuant to 40 C.F.R. § 80.30 and section 211(g) of the Act, 42 U.S.C. § 7545(g).

2. After considering the gravity of the alleged violations, 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 the most appropriate 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.

b. On March 12, 1997, EPA inspectors inspected the TIC facility and vehicles located at the Kennecott Mine, Magna, Utah. During the inspection, the inspectors took samples of diesel fuel from TIC trucks used at the mine site and forwarded the samples to the EPA laboratory for analysis to determine sulfur content. As a result of that analysis, the EPA determined that the diesel

fuel used in three TIC motor vehicles had a sulfur content that was in excess of the amount allowed under 40 C.F.R. § 80.29.

c. Upon notification of the violations of the diesel fuel regulations, Respondent took immediate steps to bring the diesel fuel in its storage tank and vehicles into compliance with the Act. Respondent issued a notice to its employees regarding which vehicles are motor vehicles requiring low sulfur diesel fuel and which vehicles are off road equipment not requiring low sulfur diesel fuel.

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. In order to prevent future violations of the Act, Respondent has taken steps to assure that the diesel fuel used in its motor vehicles is in compliance with the diesel fuel regulations.

4. After considering the gravity of the violations, 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 Two Thousand Four Hundred Dollars (\$2,400) pending successful completion of the terms of this Agreement. The Respondent agrees to pay Two Thousand Four Hundred Dollars (\$2,400). The due date for the payment shall be sixty (60) days from the date the Agreement is signed by the EPA. In accordance with section 3717 of the Debt Collection Act of 1982, 31 U.S.C. § 3717, if the debt

is not 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 \$20.00 will also be imposed if the amount due is not paid by the due date, with an additional charge of \$10.00 for each thirty-day period. The Respondent agrees to pay the amount due by cashier's check or certified 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 - 4743

A copy of the check shall be forwarded simultaneously to Ervin B. Pickell at the following address:

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

5. Timely performance is essential to this Agreement. Upon failure to timely perform pursuant to paragraph 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. The parties agree that upon such default or failure to comply, the EPA may refer this matter to the United States Attorney General for collection pursuant to § 211(d) of the Act, 42 U.S.C. § 7545(d); commence an action to enforce this Agreement or to recover the civil penalty pursuant to § 211 of the Act; or pursue any other remedies available to it. The

Respondent specifically agrees that in the event of such default or failure to comply, the EPA may proceed in an action based on the original claim of violation of § 211 of the Act, 42 U.S.C. § 7545, and the 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.

6. This Agreement becomes effective upon the date signed by the EPA, at which time a copy will be returned to the Respondent.

7. 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, its officers, agents, directors, owners, heirs, assigns, and successors.

8. The 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.

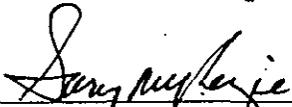
9. The terms of this Agreement are contractual and are not mere recitals. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

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

11. 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:

The Industrial Company

by:  Date: 12-31-97
[Typed Name] Gary B. McKenzie
[Typed Title] President

United States
Environmental Protection Agency

by:  Date: 3/19/98
Bruce C. Buckheit, Director
Air Enforcement Division