

violation pursuant to § 211(d) of the Act, 42 U.S.C. § 7545(d).

2. After considering the gravity of the violation and Respondent's history of compliance with the Clean Air Act, EPA proposed in the NOV a civil penalty of Twenty-Seven Thousand Dollars (\$27,000).
3. Based on information presented by Respondent, it has been determined that the fuel storage tank was authorized to contain dyed high sulfur fuel.
4. Based on the information contained in paragraph 3 above, the proposed penalty is hereby amended to Twenty-Four Thousand Dollars (\$24,000).
5. 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

6. The parties 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.
7. The parties 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, Respondent was a wholesale purchaser-consumer within the meaning of 40 C.F.R. § 80.2(o),
- b. As a result of EPA's inspection of Respondent's compliance with the diesel sulfur regulations, EPA determined that on June 3, 1996, the diesel fuel in the propulsion tanks of the eight trucks tested each showed visible dye and following sulfur levels:
 - i) the fuel in the 1980 White tractor contained 0.4957 wt% sulfur,
 - ii) the fuel in the 1975 Brock dump truck contained 0.4390 wt% sulfur,
 - iii) the fuel in the 1980 International tractor contained 0.4722 wt% sulfur,
 - iv) the fuel in the 1971 Mack tractor (New York license plate no. 87012 AB) contained 0.2815 wt% sulfur,
 - v) the fuel in the 1971 Mack tractor (New York license plate no. TY 1402) contained 0.3070 wt% sulfur,
 - vi) the fuel in the 1971 Mack dump truck contained 0.3610 wt% sulfur,
 - vii) the fuel in the 1979 Autocar tractor contained 0.2820 wt% sulfur,
 - viii) the fuel in the 1979 Mack tractor contained 0.2784 wt% sulfur,each of which is above the standard of 0.05 wt % sulfur and constitutes eight separate violations of the § 211 of

the Clean Air Act (the Act), 42 U.S.C. § 7545, and the Diesel Sulfur Regulations.

- c. Jurisdiction to settle this matter exists pursuant to section 211 of the Act, 42 U.S.C. § 7545, 40 CFR Part 80, and other provisions of law.
8. After considering the gravity of the violation alleged in paragraph 1, Respondent's history of compliance, the terms of this Agreement, and other facts presented by Respondent, EPA has determined to fully remit the civil penalty in this matter, pending successful completion of the terms of this Agreement. Respondent concedes the violations and has paid \$30,000 to the IRS for unpaid diesel fuel tax, civil penalties, fines and interest arising from the same facts and circumstances.
 9. Accordingly, Respondent agrees to do the following:
 - a. All hoses, meters and tanks are clearly marked so as to differentiate between the diesel and heating oil tanks.
 - b. Respondent will make good faith efforts to visually inspect all deliveries of diesel fuel to verify the absence of visible dye. If any dyed fuel is found, the delivery will be stopped, the contents of the tank containing any dyed fuel and any tank or hoses contaminated with dyed diesel will be flushed before use in fueling diesel motor vehicles and the facility re-supplied with undyed low sulfur diesel. The 550 gallon tank, for which the Suffolk County Department of Health

- has issued a permit, may contain dyed fuel for the exclusive use of nonroad equipment. All other diesel trucks will be fueled with low sulfur undyed diesel fuel.
- c. All employees who have a duty of fueling their diesel motor vehicles with motor vehicle diesel fuel will visually inspect the fuel at the beginning of fueling to ensure that no visible dye is present in the fuel. All diesel fueling for JPM's trucks at JPM's property will occur from a "gasboy" dispenser, which is clearly marked in the diesel fuel loading area. If dye is present, all pumping will be stopped, and will not resume until proper fuel is available and the lines and tanks have been flushed of contaminated fuel.
 - d. Training will be provided to all employees that oversee the delivery of diesel fuel and to those that fuel the diesel trucks. Training will be provided upon initial employment and updated on a semi-annual basis. Training will be verified in written format and records will be maintained at Respondent's administrative offices.
 - e. Respondent agrees that signing this agreement constitutes an undertaking to ensure 100% compliance with the diesel sulfur regulations.
 - f. On September 30, 1998, March 30, 1999 and on September 30, 1999, Respondent will deliver to Angela E. Fitzgerald of the EPA at US Environmental Protection Agency, 401 M Street SW (2242A), Washington, DC, 20460,

(1) a signed statement asserting compliance with each of the separate parts of the Compliance Program outlined above at 9 a-e,

(2) with photographs to indicate the labeling of the tanks trucks and hoses, and

(3) a list of all employees who have been trained and signatures indicating that they have received training on a semi-annual basis.

10. Time is of the essence to this Agreement. The parties agree that upon Respondent's default or failure to comply with any terms of this Agreement, and upon ten (10) days written notice by EPA and opportunity to cure the default, the penalty amount of Twenty-Four Thousand Dollars (\$24,000) shall be immediately due and owing to the United States. The parties further agree that at that time and thereafter, EPA, at its sole discretion, may commence an action to enforce this Agreement to recover the civil penalty pursuant to § 205 of the Clean Air Act; or pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claim of violation of § 203 of the Act, 42 U.S.C. § 7522, 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 the passage of time.

11. This Agreement becomes effective upon the date accepted by EPA, at which time a copy will be returned to Respondent.
12. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution intended and is sufficient to bind Respondent, its officers, agents, directors, owners, heirs, assigns, and successors.
13. Subject to the provisions of paragraph 10, 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. Notwithstanding its agreement to settle or resolve this matter, Respondent neither admits or denies the findings of fact or conclusions or law contained herein.
14. 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.
15. The validity, enforceability and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

The following agree to the terms of this Agreement:

JPM Management Corporation

by: *Joseph P. Marcario*
Joseph P. Marcario, President

Date: 4/15/98

**United States
Environmental Protection Agency**

by: *Bruce C. Buckheit*
Bruce C. Buckheit
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance

Date: 8/17/98