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

In the Matter of:
John P. Picone, Inc.
Respondent.

SETTLEMENT AGREEMENT
AED/MSEB 4712

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency ("EPA") and John P. Piccone, Inc., located in Lawrence, New York ("Respondent").

Preliminary Statement

1. On June 9, 1997, a Notice of violation ("Notice") was issued to Respondent for alleged violations of § 211 of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). Section 211(g)(2) of the Act prohibits any person from introducing, or causing or allowing the introduction into any motor vehicle diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05% after October 1, 1993. This law also subjects violators to a maximum civil penalty of \$25,000 per day for each violation and 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 \$3,000 ("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 matters. 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. On April 9, 1996, EPA inspected vehicles owned and operated by John P. Piccone, Inc.

b. As a result of the inspection, EPA determined that one of the vehicles were misfueled with red-dyed high sulfur diesel fuel.

c. In entering into this Agreement, Respondent makes no admission of fact nor does Respondent admit that it has violated any provisions of law.

d. Jurisdiction to settle this matter exists pursuant to § 211 of the Clean Air Act, 42 U.S.C. § 7545, 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 the regulations, EPA has determined to remit and mitigate the civil penalty to \$2,400 subject to successful completion of the terms of this Agreement.

Respondent agrees to pay \$2,400 to the United States of America. The due date for payment shall be October 1, 1997 ("the due date"). 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 each due date, interest will accrue from each 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.

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 4712

A photocopy of the checks shall be mailed simultaneously to:

David J. Gottfried, Esquire
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 4712

7. Time is of the essence to this Agreement. Upon failure to perform within sixty days of the due date outlined in paragraph 6 of this Agreement, Respondent agrees to pay the proposed penalty outlined in the notice of violation of \$3,000. Upon such default this amount shall be immediately due and owing. The parties further agree that upon such default or failure to comply, EPA may refer this matter to the United States Attorney General for collection pursuant to § 211(d) of the Clean Air 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 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 § 211 of the Clean Air Act, 42 U.S.C. § 7545, 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 passage of time.

8. This Agreement becomes effective upon the date accepted by EPA, at which time a copy will be returned 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.

10. 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.

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 thereby.

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

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

The following agree to the terms of this Agreement:

John P. Piccone, Inc.

by: P. Robert Jusley

Date: 7/1/97

United States
Environmental Protection Agency

by: Ann M. Portius
for Bruce C. Buckheit, Director
Air Enforcement Division

Date: 8/15/97