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

In the Matter of:)
Val Kokoszka, Owner)
Middlefield Service Center)
Respondent.)

SETTLEMENT AGREEMENT
AED/MSEB - 4939

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Val Kokoszka, Owner of Middlefield Service Center, 165 Jackson Hill Road, Middlefield, Connecticut 06455 (hereafter "Respondent").

Preliminary Statement

1. On August 17, 1999, a Notice of Violation ("Notice") was issued to Respondent for violation of § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the reformulated gasoline ("RFG") regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). See Attachment 1. This law provides that only RFG may be sold in a covered area and sets out certain minimum and maximum standards for such gasoline. This law also provides that no person shall manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline represented as reformulated and intended for sale or use in any covered area unless such gasoline meets the applicable standards specified in 40 C.F.R. § 80.41. Violators of this law are subject to a maximum civil penalty of \$27,500 per day for each violation and the amount of the economic benefit or savings resulting from the violation.

2. 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

3. 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.

4. By entering into this Agreement, Respondent does not admit that it is in any way responsible for the alleged violation or that a violation has occurred.

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. At all relevant times, Respondent was a retailer as defined within the meaning of 40 C.F.R. § 80.2.

b. On June 13, 1998, an EPA approved compliance survey was conducted at Respondent's retail outlet located at 165 Jackson Hill Road, Middlefield, Connecticut 06455. Respondent's retail outlet is located in the VOC Control Region 2 reformulated gasoline covered area where the minimum VOC emissions performance reduction standard is 13.1 percent.

c. As a result of the inspection, EPA determined that the retail outlet was selling midgrade gasoline that had a VOC emissions performance increase of 95.82 percent on June 13, 1998, and an increase of 35.28 percent on July 15, 1998. In addition, a lead additive had been added to the gasoline and the gasoline contained 0.0224 grams per gallon of phosphorus.

d. Where the gasoline contained in any storage tank at any retail outlet is found in violation, the retailer shall be deemed in violation. Therefore, Respondent is liable for violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a).

e. 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 in four consecutive quarterly payments of \$600 each. The first payment shall be due within thirty (30) days from the date that this Agreement is executed by EPA and returned to Respondent by certified mail return receipt requested ("the due date"). In accordance with the Debt Collection Act of 1982, if the debt is not paid within 30 days following the due date, interest will accrue from the due date as the rate of eight percent (8%) per annum through the date of actual payment. A late payment handling charge of \$20.00 will also be imposed if the amount is not paid by the due date, with an additional charge of \$10.00 for each subsequent 30 day period. A six percent (6%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

Respondent agrees to pay the amount by check made 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 - 4939

A photocopy of the check shall be mailed simultaneously to:

J. L. Adair, Attorney/Advisor
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
Air Enforcement Division (2242-A)
401 M Street, S.W.
Washington, D.C. 20460
Attn.: AED/MSEB - 4939

7. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 6 of this Agreement, Respondent agrees to pay a stipulated penalty of \$5,000. This stipulated penalty is in addition to the proposed penalty. Upon

such default this amount shall be immediately due and owing. Respondent further agrees 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 executed by EPA, at which time a copy will be returned to Respondent.

9. Respondent hereby represents that the individual or individuals executing the Agreement on behalf of Respondent is 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:

Val Kokoszka, Owner
Middlefield Service Center

by: Walwyn J. Kokoszka

Date: 9/27/99

United States
Environmental Protection Agency

by: Richard Biondi/H
Bruce C. Buckheit, Director

Date: 9/27/99

Air Enforcement Division
Office of Enforcement and Compliance Assurance



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 17 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Val Kokoszka, Owner
Middlefield Service Center
165 Jackson Hill Road
Middlefield, Connecticut 06455

Re: File No. AED/MSEB - 4939

NOTICE OF VIOLATION OF THE CLEAN AIR ACT

Dear Mr. Kokoszka:

On June 13, 1998, a reformulated gasoline ("RFG") survey inspection was conducted at Middlefield Service Center located at 165 Jackson Hill Road, Middlefield, Connecticut 06455. On July 15, 1998, representatives of the Environmental Protection Agency ("EPA") conducted a follow-up inspection at this same facility. The inspections were conducted to determine compliance with section 211 of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the regulations issued hereunder (40 C.F.R. part 80, subpart D).

Where inappropriate fuels are used in internal combustion engines the emissions of harmful gases can increase significantly. Notwithstanding improvements in vehicle emission controls, emissions from motor vehicles continue to make up a very large portion of all air pollution. Congress has established a program of improvement and regulation of fuels to protect our air quality from unnecessary pollution associated with the misfueling of vehicles.

EPA regulations require that gasoline sold or used in RFG covered areas must meet the standards specified for RFG. However, EPA has determined that gasoline sold or used at Middlefield Service Center, which is located in an RFG covered area, failed to meet the RFG standard for VOC emissions performance reduction specified in 40 CFR § 80.41. In particular, the mid-grade gasoline had a VOC emissions performance increase of 95.82 percent on June 13, 1998 and an increase of 35.28 percent on July 15, 1998, which violates the minimum VOC emissions performance reduction of 13.1 percent. In addition, a lead additive had been added to the mid-grade gasoline and the gasoline contained 0.0224 grams per gallon of phosphorus. As the retailer who owns, leases, operates, controls or supervises the retail outlet where the violation



Recycled/Recyclable
Printed with Soy/Canola Ink on paper that
contains at least 50% recycled fiber

was found, you are liable for violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize EPA to assess a civil penalty of up to \$27,500 per day for each such violation plus the economic benefit or savings resulting from the violation. In determining the appropriate penalty for a violation such as this we consider the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of your business, your history of compliance with the Act, actions taken by you to remedy the violation and prevent future violations, the effect of the penalty on your ability to continue in business and other matters as justice may require. Based on these factors, we propose a civil penalty of \$2,400 for the violation alleged in this Notice.

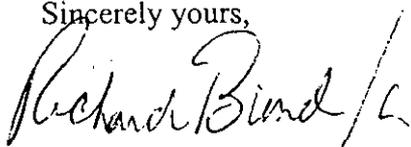
We encourage early settlement of matters such as this. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violation is corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court.

Please contact the EPA attorney designated below regarding this Notice:

Jocelyn L. Adair, Esquire
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch (2242A)
401 M Street, S.W.
Washington, D.C. 20460
Phone number: (202) 564-1011

Let me once again emphasize that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement in this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Richard Bindler", is written over the typed name of Bruce C. Buckheit.

Bruce C. Buckheit, Director
Air Enforcement Division

2. After considering the gravity of the alleged violation, 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 and/or a person within the meaning of section 302(e) of the Clean Air Act 42 U.S.C. § 7602(e).

b. On December 3, 1998, inspectors for the EPA inspected the Tarmac Richmond Quarry facility located at 1500 Goode Street, Richmond, Virginia 23224. During the inspection, the inspectors took a sample of diesel fuel from the propulsion tank of one (1) motor vehicle(s) at the Respondent's facility and forwarded the sample to the EPA laboratory for analysis to determine its sulfur content. As a result of that analysis, the EPA determined that the diesel fuel contained in each propulsion tank had a sulfur

content that was in excess of the amount allowed under 40 C.F.R. § 80.29 and section 211(g) of the Clean Air Act.

c. Upon notification of the diesel sulfur violation, Respondent took immediate steps to bring the diesel fuel in the propulsion tanks of its vehicles into compliance with the Clean Air Act (hereinafter "the Act"). In addition, Respondent implemented a policy to prevent future violations from occurring.

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. After considering the gravity of the violation, 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 One Thousand Eight Hundred Dollars (\$1,800) pending successful completion of the terms of this Agreement. The Respondent agrees to pay One Thousand Eight Hundred Dollars (\$1,800). The due date shall be thirty (30) days from the date the Agreement is signed by the EPA. Late payment of this civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. 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 - 4982

A copy of the check shall be forwarded simultaneously to Judith E. Graham at the following address:

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

4. Timely performance is essential to this Agreement. Upon failure to timely perform pursuant to paragraphs B(3) or 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.

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

6. 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.

7. 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.

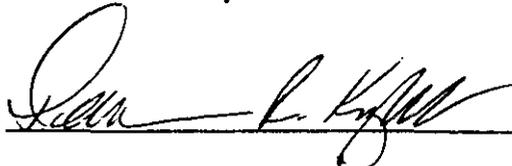
8. The terms of this Agreement are contractual and are not mere recitals. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

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

10. 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:

TARMAC AMERICA, INC.

by: 
Tarmac America, Inc.

Date: 11/2/99

United States
Environmental Protection Agency

by: 
Bruce C. Buckheit, Director
Air Enforcement Division

Date: 12-16-99

2. After considering the gravity of the alleged violation, 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 Respondent neither admits nor denies 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 and/or a person within the meaning of section 302(e) of the Clean Air Act 42 U.S.C. § 7602(e).

b. On November 9, 1998, inspectors for the EPA inspected the Wells Ready Mix Concrete, Inc. facility located at 504 W. Main Street, West Liberty, Kentucky. During the inspection, the inspectors took a sample of diesel fuel from the propulsion tank of one (1) motor vehicle(s) at the Respondent's facility and forwarded the sample to the EPA laboratory for analysis to determine its sulfur content. As a result of that analysis, the EPA determined that the diesel fuel contained in each propulsion

tank had a sulfur content that was in excess of the amount allowed under 40 C.F.R. § 80.29 and section 211(g) of the Clean Air Act.

c. Upon notification of the diesel sulfur violation, Respondent took immediate steps to bring the diesel fuel in the propulsion tanks of its vehicles into compliance with the Clean Air Act (hereinafter "the Act"). In addition, Respondent implemented a policy to prevent future violations from occurring.

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.

e. **(See Insert Below)

3. After considering the gravity of the violation, 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 One Thousand Eight Hundred Dollars (\$1,800) pending successful completion of the terms of this Agreement. The Respondent agrees to pay One Thousand Eight Hundred Dollars (\$1,800). The due date shall be thirty (30) days from the date the Agreement is signed by the EPA. Late payment of this civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. 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 ~ 4983

** e. The Respondent denies the allegations set forth in the Notice of Violation and Paragraph A, 1, of this Agreement. The Respondent states, affirmatively, that the diesel sulfur violation /contamination complained of occurred prior to its acquisition of the vehicle in October of 1997, and remained during an extended period of non-use of the vehicle until its discovery as alleged in the notice of violation. Further, the Respondent does not maintain at, and could not have dispensed from, its facilities in West Liberty, Kentucky, or elsewhere, diesel fuel of the type alleged in the Notice of Violation.

A copy of the check shall be forwarded simultaneously to Judith E. Graham at the following address:

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

4. Timely performance is essential to this Agreement. Upon failure to timely perform pursuant to paragraphs B(3) or 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.

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

6. 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.

7. 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.

8. 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.

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

10. 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:

WELLS READY MIX CONCRETE, INC.

by: William S. Wells Date: 3-21-2000
Wells Ready Mix Concrete, Inc.

United States
Environmental Protection Agency

by: Bruce C. Buckheit Jr Date: 6/26/00
Bruce C. Buckheit, Director
Air Enforcement Division