

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C.

In the matter of:  
RCF Fuel Oil Corporation  
Respondent.

File No. MSEB/AED - 4695  
SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and RCF Fuel Oil Corporation of 274-C West Montauk Highway, Hampton Bays, New York, (Respondent).

Preliminary Statement

1. On April 15, 1997, a Notice of Violation (NOV) was issued to Respondent alleging that Respondent had violated § 211 of the Clean Air Act (the Act), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 CFR Part 80. The NOV alleged that on June 17, 1996, the diesel fuel in the propulsion tanks of two trucks in Respondent's commercial fleet had visible evidence of dye and had a sulfur percentage, by weight, greater than 0.05 percent (actual EPA laboratory results were 0.053 and 0.2098 wt % sulfur, respectively) constituting two violations of 40 CFR §80.29(a). The NOV further recited the statutory civil penalty maximum of Twenty-Five Thousand Dollars (\$25,000) per day for each violation, plus the amount of economic benefit or savings resulting from the 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 Eleven Thousand Dollars (\$11,000).

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. Respondent neither admits nor denies the allegations which are the subject of this matter.

Terms of Agreement

4. 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.

5. 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.

6. Respondent's distribution facility consists of: one (1) undyed low sulfur diesel tank for use in motor vehicle operation and two (2) tanks containing dyed No. 2-fuel (a.k.a. "heating") oil. In order to prevent future violations, Respondent has implemented the following procedures:

- a. The hoses, meters and tanks have been 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.

- 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 RCF's trucks at RCF'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 delivery 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.

7. 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 conditionally remit and mitigate the civil penalty to Three Thousand Six Hundred Dollars (\$3,600.00). Respondent agrees to pay Three Thousand Six Hundred Dollars (\$3,600.00) in three monthly installments. The due dates for the payments are as follows:

- a) the first payment of One Thousand Two Hundred Dollars (\$1,200) is due within thirty days of receipt of a signed settlement agreement from EPA,
- b) the second payment of One Thousand Two Hundred Dollars (\$1,200) is due within sixty days of receipt of a signed settlement agreement from EPA, and
- c) the third and final payment of One Thousand Two Hundred Dollars (\$1,200) is due within ninety days of receipt of a signed settlement agreement from EPA.

In the event Respondent does not receive a copy of this Agreement within thirty (30) days following its execution by EPA, the due date shall be thirty (30) days following the date of Respondent's receipt of an executed copy. In accordance with the Debt Collection Act of 1982, if the debt is not paid within thirty (30) days following the due date, interest will accrue from the due date at the rate of eight percent (8%) per annum, through the date of actual payment. 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 this amount. Payment will be made to the "United States of America," with the notation "AED/MSEB - 4695" and mailed to:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 306277M  
Pittsburgh, Pennsylvania 15251  
Attention: AED/MSEB - 4695

A copy of this check shall be forwarded to Angela E. Fitzgerald, at the following address:

Angela E. Fitzgerald, Attorney/Advisor  
U.S. Environmental Protection Agency  
401 M Street, SW (2242A)  
Washington, D.C. 20460

8. Upon receipt of the full sum of \$3,600, the United States will waive, release and forever discharge and promise to refrain from instituting, prosecute, or maintaining any administrative, civil or criminal claim, action, lawsuit, cause of action, demand, penalty, or damages against Respondent, its employees, officers, stockholders, directors or employees regarding the allegation set forth in paragraph 1.

9. The parties agree that specifically excluded from the scope and terms of any release referenced in paragraph 8 are any:

- (a) disputes or claims for the enforcement of the terms of this Agreement;
  - (b) new violations of § 213 of Clean Air Act, 42 U.S.C. §7545, which are not the subject of this Agreement;
- or

(c) any other violations of law.

10. Time is of the essence to this Agreement. The parties agree that upon default or failure to comply with the payment terms of this Agreement, EPA may commence an action to enforce this Agreement or 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.

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

11. 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.

12. 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.

13. 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.

14. 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:

RCF Fuel Oil Corporation

by: Ralph Fuccillo, President  
Ralph Fuccillo, President

Date: 9/18/97

United States  
Environmental Protection Agency

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

Date: 12/2/97