

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for John Kilborn 7/30/14
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CAA-01-2014-0045

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Thomas Miozzi, President
T. Miozzi, INC.
75 Airport Road
Coventry, RI 02816

Total Dollar Amount of Receivable \$ 23,878.00 Due Date: _____

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1ST \$ 11,850.00 on 8/29/14
- 2nd \$ 12,028.00 on 1/26/15
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number _____



U. S. ENVIRONMENTAL PROTECTION AGENCY – NEW ENGLAND
5 POST OFFICE SQUARE, SUITE 100 (OES04-3)
BOSTON, MA 02109-3912

HAND DELIVERY

July 30, 2014

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: *In the Matter of T. Miozzi, Inc./Docket CAA 01-2014-0045*

Dear Ms. Santiago:

Attached for filing in the above-referenced matter are an original and one copy of an *Consent Agreement and Final Order* (“CAFO”) that the U.S. Environmental Protection Agency, Region 1 (“EPA”) issued to T. Miozzi, Inc. Also attached are an original and one copy of a Certificate of Service.

EPA has also sent copies of the CAFO, the Certificate of Service, and this letter to the Respondent by certified mail.

Thank you for your assistance. Please call me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "John W. Kilborn".

John W. Kilborn
Senior Enforcement Counsel

cc: Thomas Miozzi, President, T. Miozzi Inc.
Christine Sansevero, EPA

RECEIVED

JUL 30 2014

EPA ORC
Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

RECEIVED

JUL 30 2014

EPA ORC
Office of Regional Hearing Clerk

In the Matter of:)
)
T. Miozzi, Inc.)
75 Airport Road)
Coventry, Rhode Island 02816)
)
Respondent)
)

Docket No. CAA 01-2014-0045

CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region I (“EPA”), alleges that T. Miozzi, Inc. (“Respondent”) violated certain provisions of a Minor Source Permit issued by the State of Rhode Island and Providence Plantations Department of Environmental Management, Office of Air Resources, for Respondent’s hot mix asphalt plant, located at 75 Airport Road in Coventry, Rhode Island.

EPA and Respondent agree to settlement of this matter through this Consent Agreement and Final Order (“CAFO”) without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b).

EPA and Respondent agree that settlement of this matter is in the public interest, and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

A. PRELIMINARY STATEMENT

1. The provisions of this CAFO shall apply to and be binding upon EPA and upon Respondent and its officers, directors, successors, and assigns. The “Effective Date” of this CAFO shall be defined as the date that this CAFO is filed with the Regional Hearing Clerk, as described in the Final Order attached to this Consent Agreement.

2. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondent waives any defenses it might have as to jurisdiction and venue. Respondent consents to the terms of this CAFO.

3. Respondent neither admits nor denies the general or specific factual and legal allegations contained below in Section B. For purposes of this CAFO and any action necessary to enforce it, Respondent hereby waives its right to request a judicial or administrative hearing or otherwise to contest the allegations in this CAFO. Respondent waives any right to appeal this CAFO.

Statutory and Regulatory Authorities

4. Section 110(a) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7410(a), requires that each state prepare a state implementation plan (“SIP”) incorporating regulations designed to attain and maintain healthy air quality. A state must submit its SIP and any SIP revisions to EPA for approval. Once EPA has approved a SIP, EPA may enforce the SIP and any permit issued under the SIP pursuant to Sections 113(a) and (b) of the CAA, 42 U.S.C. §§ 7413(a) and (b).

5. EPA has approved the Rhode Island SIP under Section 110 of the Act, 42 U.S.C. § 7410. The SIP contains various federally-approved portions of the Rhode Island

Air Pollution Control Regulations (“RI APC Regulations”) and can be accessed at http://www.epa.gov/region1/topics/air/sips/sips_ri.html.

6. Rhode Island Department of Environmental Management (“RIDEM”), Office of Air Resources, issued a Minor Source Permit, pursuant to the RI APC Regulations, on February 8, 2008 to Respondent (Approval Nos. 1895, 1971, and 2021) (the “Permit”) for Respondent’s hot mix asphalt plant, located at 75 Airport Road in Coventry, Rhode Island. Accordingly, the Permit was issued pursuant to Rhode Island’s SIP.

7. Respondent’s alleged violations described herein render Respondent liable for penalties under Section 113(d) of the Act. Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes EPA to issue an administrative penalty order.

8. EPA has provided notice to Respondent and RIDEM of EPA’s findings of violations described in this CAFO, at least 30 days prior to the issuance of an administrative penalty order pursuant to Section 113(d) of the Act.

9. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Civil Monetary Inflation Rule (see Pub. L. 104-134 and 40 C.F.R. Part 19), EPA may assess penalties of up to (i) \$27,500 for each day of each violation of the Act occurring after January 30, 1997 through March 15, 2004, (ii) \$32,500 for each day of each violation of the Act occurring after March 15, 2004 through January 12, 2009, and (iii) \$37,500 for each day of each violation of the Act occurring after January 12, 2009.

10. Section 113(d) of the Act limits EPA’s authority to issue administrative complaints to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than twelve months prior to the initiation

of the action, unless the EPA Administrator and the Attorney General for the U.S. Department of Justice (“DOJ”) jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative action. Pursuant to the Debt Collection Improvement Act and its implementing regulations, the above-described penalty cap has been raised to \$320,000.

11. Some of the violations alleged in Section B below occurred or commenced more than twelve months ago. Accordingly EPA and DOJ have jointly determined that this matter is appropriate for administrative action.

B. EPA FINDINGS

General Findings

12. Respondent operates a continuous drum hot mix asphalt plant that began operations at its current location in July 2006.

13. On February 8, 2008, RIDEM issued the Permit to Respondent for its facility in Coventry, Rhode Island.

14. On April 11, 2013, RIDEM and EPA conducted a joint Clean Air Act compliance inspection of Respondent’s facility.

15. On March 11, 2014, EPA issued a Notice of Violation to Respondent. RIDEM was provided a copy of such Notice of Violation.

Specific Findings

Alleged Failure to Record Bag House Pressure Drop Measurements

16. Condition C.1 of the Permit requires that Respondent continuously monitor the pressure drop across its bag house and record the date, time, and measurement of the

pressure drop once per day.

17. Respondent failed to record the date, time and measurement of the bag house pressure drop for each day. Specifically, Respondent was unable to document that these daily records were available for calendar years 2011 and 2012.

18. Accordingly, Respondent has violated Condition C.1 of its Permit.

Alleged Failure to Conduct Annual Testing for Carbon Dioxide and Nitrogen Oxides

19. Condition E.2 of the Permit requires that Respondent conduct annual emissions testing of its rotary drum burner for carbon monoxide and nitrogen oxides, and maintain the required results on-site for a minimum of five years after the date of the test.

20. Respondent failed to conduct annual emission testing of its rotary drum burner for carbon dioxide and nitrogen oxide for calendar years 2010, 2011, and 2012.

21. Accordingly, Respondent has violated Condition E.2 of its Permit.

Alleged Failure to Maintain Monthly Hazardous Air Pollutant Records

22. Condition F.3 of the Permit requires that Respondent, on a monthly basis, no later than five days after the first of the month, determine the total quantity of hazardous air pollutants discharged to the atmosphere from the entire facility and keep such records and provide such records to RIDEM upon request.

23. Respondent has failed to maintain the required hazardous air pollutant records.

24. Accordingly, Respondent has violated Condition F.3 of its Permit.

Alleged Failure to Maintain Records on Alternative Fuel Usage

25. Condition F.8.d of the Permit requires that Respondent record the dates and hours when burning of alternative fuel commenced and ceased, or was interrupted.

26. Respondent has failed to maintain appropriate records regarding the usage of alternative fuel.

27. Accordingly, Respondent has violated Condition F.8.d of its Permit.

Alleged Failure to Conduct “Visolite” or Similar Leak Detection Testing

28. Condition H.4 of the Permit requires that Respondent conduct “Visolite” or similar leak detection testing of its bag house prior to the initial startup and operation of the facility, when plant operations are resumed after winter shutdown, and every 90 days during the operating season.

29. Respondent has failed to conduct the required “Visolite” or similar leak detection testing.

30. Accordingly, Respondent has violated Condition H. 4 of its Permit.

C. TERMS OF SETTLEMENT

31. Without admitting or denying the specific factual allegations contained in this CAFO, Respondent consents to the terms and issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty as set forth in this CAFO.

32. As a condition of settlement, Respondent agrees to comply with the non-penalty provisions in Appendix 1 (Terms of Compliance), which is incorporated herein by reference as an enforceable part of this CAFO. In addition, in accordance with Section 113(d)(2)(B) of the Act, EPA has compromised the maximum civil penalty of \$37,500 per day per violation authorized in this matter, applying the factors set forth in Section 113(e) of the Act and the 1991 Clean Air Act Stationary Source Civil Penalty

Policy, including Respondent's significant cooperation in agreeing to perform the non-penalty obligations in Appendix 1 to this CAFO.

33. Stipulated Penalties: Respondent shall be liable for stipulated penalties in the amount of \$600 for each day for the first through fifth day for each failure to perform any action required in Paragraph 32 and \$1,200 for each day thereafter for each failure to perform any action required in Paragraph 32.

34. Civil Penalty: Taking into account the particular facts and circumstances of this matter, with specific reference to the statutory factors of Section 113(e) of the Act, and other factors, including Respondent's significant cooperation in agreeing to perform the non-penalty obligations in Appendix 1 to this CAFO, EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in this CAFO in the total amount of twenty-three thousand seven hundred dollars (\$23,700), plus calculated interest. Respondent shall pay the civil penalty as follows: not later than thirty (30) days after the Effective Date, Respondent shall pay eleven thousand, eight hundred and fifty dollars (\$11,850); and not later than one hundred and eighty (180) days after the Effective Date, Respondent shall pay twelve thousand twenty-eight dollars (\$12,028), which is comprised of \$11,850, plus \$178 in calculated interest.

35. Respondent shall make the penalty payments by submitting a bank, cashier's, or certified check, to the order of the "Treasurer, United States of America," in the amounts described in the preceding paragraph to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent may submit penalty payments by via express mail to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
Telephone: 314-418-4087

Respondent shall note the case name and docket number of this action (CAA-01-2014-0045) on the check and in an accompanying cover letter, and shall simultaneously provide copies of the check and cover letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
Suite 100, Mail Code ORA18-1
5 Post Office Square
Boston, MA 02109-3912

and

John W. Kilborn
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I
Suite 100, Mail Code OES4-03
5 Post Office Square
Boston, MA 02109-3912

36. Pursuant to Section 113(d)(5) of the CAA, if Respondent fails to pay any penalty amount it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. 42 U.S.C. § 7413(d)(5). Interest will be assessed on the penalty if it is not paid by the due dates established herein. In that event, interest will accrue from the date the CAFO was signed by the EPA Regional Judicial Officer, at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that the penalty is not paid when due, an additional charge will

be assessed to cover the United States' enforcement expenses, including attorneys' fees and collection costs. A quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter.

37. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.

D. GENERAL PROVISIONS

38. All submissions required by this Order shall be sent to:

If by Respondent:

Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency—Region 1
Suite 100 Mail Code OES4-5
5 Post Office Square
Boston, MA 02109-3912
Attention: Christine Sansevero

If by EPA:

Thomas Miozzi, President
T. Miozzi, Inc.
75 Airport Road
Coventry, RI 02816

39. The stipulated penalties in this CAFO, the civil penalty under Paragraph 34, above, any interest, and the nonpayment penalties and/or charges as described in Paragraph 36, above, shall represent penalties assessed by EPA and shall not be

deductible for purposes of federal taxes, and shall not be deductible for purposes of state, or local taxes unless allowed by law.

40. Respondent shall pay stipulated penalties plus any interest due thereupon within fifteen (15) days of receipt of a written demand by Complainant for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 35 herein. Complainant may, in its sole discretion, elect not to seek stipulated penalties or to compromise any portion of stipulated penalties that accrue pursuant to this CAFO.

41. Payment of the civil penalty, and any interest, non-payment penalties, and/or other charges, does not waive, suspend, or modify the responsibility of Respondent to comply with the requirements of all of the federal laws and regulations administered by EPA and shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations.

42. This CAFO constitutes a settlement by EPA of all claims against Respondent for civil penalties pursuant to Section 113 of the Act for the violations alleged in Section B of this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

43. Except as described in Paragraph 36, each party shall bear its own costs and fees in this proceeding, including attorney's fees, and specifically waives any right to

recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

44. Each party certifies that at least one of their undersigned representatives is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind such party to this document.

[The remainder of this page is intentionally left blank.]

FOR T. MIOZZI, INC.

Name *Tom Miozzi*

Date *7-17-14*

Title *president T. Miozzi inc.*

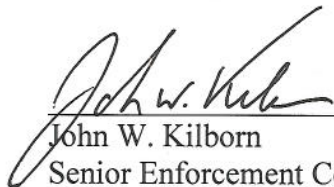
FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I

07/25/14

Date



John W. Kilborn
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I

07/23/14

Date

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become effective on the date it is filed with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY



LeAnn Jensen, Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

7/28/14
Date

APPENDIX 1

**Terms of Compliance
Consent Agreement and Final Order
T. Miozzi, Inc.**

1. T. Miozzi shall comply with the provisions of the Minor Source Permit issued on February 8, 2008 to T. Miozzi, Inc. by the State of Rhode Island, Department of Environmental Management (“RIDEM”), Office of Air Resources, Approval No. 1895, 1971, and 2021 (the “Permit”). Without limitation, T. Miozzi shall comply with the following requirements of the Permit:
 - (a) Condition C.1: continuously monitor the pressure drop across the bag house and record the date, time, and measurement of the pressure drop once per day.
 - (b) Condition E.2: conduct annual emissions testing of its rotary drum burner for nitrogen oxides and carbon monoxide, and maintain the required results on-site for a minimum of five years after the date of the test.
 - (c) Condition F.3: on a monthly basis, no later than five days after the first of the month, determine the total quantity of hazardous air pollutants discharged to the atmosphere from the entire facility and keep such records and provide such records to RIDEM upon request.
 - (d) Condition F.8.d: record the dates and hours when burning of alternative fuel commenced and ceased, or was interrupted.
 - (e) Condition H.4: conduct “Visolite” or similar leak detection testing of its bag house prior to the initial startup and operation of the facility, when plant operations are resumed after the winter shutdown, and every 90 days during the operating season.
2. T. Miozzi shall implement a record-keeping system that will record the information necessary to demonstrate compliance with the Permit and this CAFO, including this Appendix 1.
3. T. Miozzi shall submit to EPA a report to demonstrate compliance with the terms of the Permit and this CAFO. Such report shall include, without limitation, records from T. Miozzi’s record-keeping system and all records necessary to demonstrate compliance with the Permit and this CAFO. T. Miozzi shall submit such report within 60 days after seasonal operations for the 2014 operating year cease at T. Miozzi’s facility, but no later than February 28, 2015.

****END****

EPA DOCKET NO.: CAA-01-2014-0045
In Re: T. Miozzi, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Consent Agreement and Final Order* has been sent to the following persons on the date and in the manner noted below:

Original and one copy,
hand-delivered:

Ms. Wanda Santiago, Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3812

Copy, by Certified Mail:

Thomas Miozzi, President
T. Miozzi, Inc.
75 Airport Road
Coventry, RI 02816

Dated: 07/30/14


John W. Kilborn
Senior Enforcement Counsel
U.S. Environmental Protection Agency,
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3812
(617) 918-1893
Kilborn.john@epa.gov