

**EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS**

This form was originated by Wanda I. Santiago for John W. Kilborn 3/29/18  
Name of Case Attorney Date

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

Case Docket Number DAA-01-2018-0007

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:

John S. Lane and Son, Inc.  
c/o Harry C. Lane, President  
1550 West Street  
Amherst, MA 01002

Total Dollar Amount of Receivable \$ 93,500 Due Date: 4/28/18

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

5<sup>th</sup> \$ \_\_\_\_\_ 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

MAR 29 2018

HAND DELIVERY

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



Re: John S. Lane and Son, Inc./EPA Docket No. CAA-01-2018-0007

Dear Ms. Santiago:

Attached for filing in the above-referenced matter are an original and one copy of an executed *Consent Agreement and Final Order* (“CAFO”) for the above-referenced matter that the EPA has entered into with the Respondent. 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 First Class 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 McCusker, EPA  
Harry C. Lane, John S. Lane and Son, Inc.

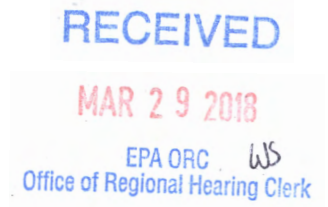
Enclosures:

1. Original CAFO and copy of CAFO
2. Certificate of Service and copy

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 – NEW ENGLAND**

\_\_\_\_\_  
IN THE MATTER OF )  
 )  
John S. Lane and Son, Inc. )  
 )  
Respondent )  
 )  
Proceeding under Section )  
113 of the Clean Air Act )  
\_\_\_\_\_ )

Docket No. CAA-01-2018-0007



**CONSENT AGREEMENT AND FINAL ORDER**

1. The United States Environmental Protection Agency, Region 1 (“EPA” or “Complainant”) alleges that John S. Lane and Son, Inc. (“Lane” or “Respondent”) violated certain provisions of (i) the *New Source Performance Standards for Nonmetallic Mineral Processing Plants*, found at 40 C.F.R. Part 60, Subpart OOO (“Nonmetallic Mineral Processing NSPS”); and (ii) the *National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines*, found at 40 C.F.R. Part 63, Subpart ZZZZ (“RICE NESHAP”).

2. EPA and Respondent agree that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA’s *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

3. Therefore, before any hearing, without adjudication of any issue of fact or law,

upon the record, and upon consent and agreement of Complainant and Respondent, it is hereby ordered and adjudged as follows:

**A. PRELIMINARY STATEMENT**

4. The provisions of this CAFO shall apply to and be binding upon EPA and upon Respondent, its officers, directors, successors, and assigns.

5. The effective date of this CAFO shall be the date it is filed with the Regional Hearing Clerk, in accordance with 40 C.F.R. § 22.31(b).

6. 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, and, without admitting or denying the factual allegations contained in this CAFO, consents to its terms.

7. Respondent hereby waives its right to contest any issue of law or fact set forth in this CAFO, as well as its right to appeal the Final Order.

8. By signing this CAFO, Respondent certifies that it is presently operating in compliance with the Nonmetallic Mineral Processing NSPS and the RICE NESHAP, and that it has fully addressed the violations alleged herein.

**Statutory and Regulatory Authority**

9. EPA promulgated the Nonmetallic Mineral Processing NSPS and the RICE NESHAP pursuant to Sections 111 and 112 of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. §§ 7411 and 7412, respectively. Regulations promulgated under CAA Section 111 and 112 are enforceable by EPA in accordance with Section 113 of the Act, 42 U.S.C. § 7413.

10. 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.

11. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's *Civil Monetary Penalty Inflation Adjustment Rule*, 40 C.F.R. Part 19, promulgated in accordance with the *Debt Collection Improvement Act of 1996* ("DCIA"), 31 U.S.C. §§ 3701 *et seq.*, provide for the assessment of civil penalties up to \$25,000 per day as adjusted by the DCIA.

12. Section 113(d) of the CAA limits EPA's authority to issue administrative penalty orders to matters where the total penalty sought does not exceed \$200,000 and the first date of violation occurred no more than twelve months prior to the initiation of the action, unless EPA and the U.S. Department of Justice ("DOJ") jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for an administrative penalty action. Pursuant to the DCIA and its implementing regulations, the above-described penalty cap has been raised to \$369,532. Although this CAFO alleges violations that commenced more than twelve months ago, EPA and DOJ have jointly determined that this matter is appropriate for an administrative penalty action.

## **B. EPA FINDINGS**

### General Findings

13. Since approximately 1914, Respondent has conducted stone crushing and gravel processing operations at 1550 West Street, in Amherst, Massachusetts (the "Facility"). The Facility is a fixed nonmetallic mineral processing plant, as defined at 40 C.F.R. § 60.671, with a processing capacity of 350 tons per hour. Respondent replaced its entire stone crushing and processing line in the 1997 to 1999 timeframe.

14. EPA conducted an on-site inspection of the Facility on May 25, 2016.

15. On January 26, 2017, EPA issued a Notice of Violation ("NOV") to Respondent

for the Facility. The NOV described EPA's findings that Respondent had violated certain CAA requirements relating to the Nonmetallic Mineral Processing NSPS and the RICE NESHAP.

16. At the time of EPA's inspection, Respondent operated the following equipment at the Facility:

- a. One Sevdala primary jaw crusher; one Nordberg secondary cone crusher; one Nordberg tertiary cone crusher; and a number of associated screeners and conveyors; and
- b. One non-emergency, stationary Caterpillar Model 3512 diesel engine/generator, with a brake-horse power rating of 1844 ("Engine 390"); and one non-emergency, stationary Caterpillar Model 3512 diesel engine/generator, with a brake-horse power rating of 1011 ("Engine 454").

17. On or about October 5, 2017, Respondent ceased using Engine 390 and instead connected to the electrical grid to supply the electricity formerly generated by Engine 390. On or about October 15, 2017, Respondent outfitted Engine 454 with an emission control device.

#### Specific Findings

##### Alleged Violations of Nonmetallic Mineral Processing NSPS

18. The Nonmetallic Mineral Processing NSPS applies to fixed sand and gravel and crushed stone plants with a capacity of more than 25 tons per hour. 40 C.F.R. § 60.670(c)(1). The Nonmetallic Mineral Processing NSPS applies to portable sand and gravel and crushed stone plants with a capacity of more than 150 tons per hour. 40 C.F.R. § 60.670(c)(2).

19. The provisions of the Nonmetallic Mineral Processing NSPS apply to the following "affected facilities" in a fixed or portable nonmetallic mineral processing plant: each crusher, grinding mill, screening operation, bucket elevator, belt conveyer, bagging operation,

storage bin, and enclosed truck or railcar loading station. 40 C.F.R. § 60.670(a).

20. Respondent's various crushers, screeners, and belt conveyers at the Facility are "affected facilities" under the Nonmetallic Mineral Processing NSPS.

21. The effective date of the Nonmetallic Mineral Processing NSPS was August 1, 1985. *See* 50 Fed. Reg. 31328 (August 1, 1985). Amendments to the Nonmetallic Mineral Processing NSPS were effective on April 28, 2009. *See* 74 Fed. Reg. 19309 (April 28, 2009). Each owner or operator of an affected facility that commenced construction, reconstruction, or modification after August 31, 1983 is subject to the requirements of the Nonmetallic Mineral Processing NSPS as promulgated on August 1, 1985. *See* 40 C.F.R. § 60.670(e).

22. Pursuant to 40 C.F.R. § 60.672(b), Standard for Particulate Matter, affected facilities without capture systems, such as Respondent's Facility, must meet the fugitive emission limits and compliance requirements in Table 3 of Subpart OOO within 60 days after achieving the maximum production rate at which the facility will be operated, but no later than 180 days after initial startup as required under 40 C.F.R. § 60.111.

23. Pursuant to 40 C.F.R. § 60.675(c), Test Methods and Procedures, the owner or operator of an affected facility must determine compliance with § 60.672(b) by performing EPA Reference Method 9 visible emission testing on all subject equipment (*e.g.*, the crushers, screeners, and conveyor belts).

24. Respondent replaced its entire stone crushing and processing line in the 1997 to 1999 timeframe. Therefore, Respondent was required to conduct EPA Reference Method 9 visible emission testing to determine its fugitive emissions from the subject equipment (*e.g.*, the crushers, screeners, and conveyor belts), by various dates in the 1997 to 2000 timeframe, as the old production line was being replaced with the new production line.

25. Respondent did not complete the EPA Reference Method 9 visible emission testing to determine fugitive emissions from all subject equipment (*e.g.*, the crushers, screeners, and conveyor belts) at the Facility until October 20, 2017.

26. Accordingly, Respondent violated 40 C.F.R. §§ 60.672(b) and 60.675(c) at the Facility.

27. Pursuant to 40 C.F.R. § 60.676(i), the owner or operator of an affected facility must submit to EPA a notification of the actual date of initial startup of each affected facility (*e.g.*, each crusher, screener, and conveyor belt).

28. Respondent did not provide a notification of the actual date of initial startup for its stone crushing and gravel processing equipment at the Facility until April 7, 2017.

29. Accordingly, Respondent violated 40 C.F.R. § 60.676(i) at the Facility.

#### Alleged Violations of RICE NESHAP

30. The RICE NESHAP applies to stationary reciprocating internal combustion engines (“RICE”) at major or area sources of hazardous air pollutant (“HAP”) emissions. 40 C.F.R. § 63.6585.

31. The Facility is considered to be an “area source” of HAP emissions because the available evidence suggests that the Facility does not have the potential to emit 10 tons or more of a single HAP nor the potential to emit 25 tons or more of a combination of HAPs. 40 C.F.R. §§ 63.6585(b) and (c).

32. According to 40 C.F.R. § 63.6590(a)(1)(iii), stationary RICE located at an area source of HAP emissions that commenced construction prior to June 12, 2006 are considered “existing” RICE units.

33. Engine 390, which was installed by the end of 1997, has a horsepower rating of



1844.

34. Engine 454, which was installed in the 2005/2006 timeframe, has a horsepower rating of 1011.

35. Engine 390 and Engine 454 are both existing RICE units subject to the RICE NESHAP, except that as of October 5, 2017, Engine 390 has been taken out of service. If Engine 390 is put back into service in any stationary<sup>1</sup> capacity, it must comply with the RICE NESHAP.

36. Pursuant to 40 C.F.R. § 63.6645(a)(2), the owner or operator of existing stationary RICE located at an area source of HAP emissions, subject to the RICE NESHAP, must submit an initial notification, as described in §§ 63.6645 and 63.9(b). This notification was due by August 31, 2010.

37. Respondent did not submit the required initial notification for Engine 390 or Engine 454 until February 16, 2017.

38. Accordingly, Respondent violated 40 C.F.R. §§ 63.6645 and 63.9(b) with respect to Engine 390 and Engine 454.

39. Pursuant to 40 C.F.R. § 63.6603, the owner or operator of an existing stationary RICE located at an area source of HAP emissions must comply with the requirements in Table 2d of the RICE NESHAP.

40. Table 2d requires non-emergency, non-black start, compression ignition, stationary RICE greater than 500 horsepower to:

- a. Limit the concentration of carbon monoxide (“CO”) in the stationary RICE

---

<sup>1</sup> For example, see 40 C.F.R. § 1068.31 – *Changing the status of nonroad or stationary engines under the definition of “nonroad engine.”* Note that a nonroad engine ceases to be a nonroad engine and becomes a new stationary engine if, at any time, it meets the criteria specified in paragraph (2)(iii) in the definition of “nonroad engine” in 40 C.F.R. § 1068.30.

exhaust to 23 parts per million, volumetric dry (“ppmvd”) at 15 percent oxygen; or

b. Reduce CO emissions by 70 percent or more.

41. Pursuant to 40 C.F.R § 63.6612(a), an owner or operator of an existing stationary RICE located at an area source of HAP emissions must conduct an initial performance test (or other initial compliance demonstration that applies according to Table 4 and Table 5 of the RICE NESHAP) within 180 days after the compliance date specified in 40 C.F.R. § 63.6595 and according to the provisions in 40 C.F.R. § 63.7(a)(2). The engines at the Facility each had a compliance date of May 3, 2013. Therefore, the due date for the initial performance test and/or initial compliance demonstration for each of the Facility engines was October 30, 2013.

42. Respondent did not conduct a timely initial performance test or initial compliance demonstration on the engines at the Facility. On October 25, 2017, Respondent tested Engine 454. On October 5, 2017, Respondent removed Engine 390 from service.

43. Accordingly, Respondent violated 40 C.F.R §§ 63.6612(a), 63.6603, and 63.7(a)(2) with respect to Engine 390 and Engine 454.

44. Pursuant to 40 C.F.R. §§ 63.6645(a)(2) and 63.9(h), the owner or operator of an existing stationary RICE located at an area source of HAP emissions must submit to the Administrator a notification of compliance status.

45. Respondent did not submit a timely notification of compliance status for Engine 390 or Engine 454. On February 14, 2018, Respondent submitted a notification of compliance status for Engine 454. On October 5, 2017, Respondent removed Engine 390 from service.

46. Accordingly, Respondent violated 40 C.F.R §§ 63.6645 and 63.9(h) with respect to Engine 390 and Engine 454.

47. Pursuant to 40 C.F.R. § 63.6650, the owner or operator of a stationary, non-emergency, non-black start, compression ignition RICE greater than 300 horsepower located at an area source of HAP emissions must submit semiannual compliance reports to EPA.

48. Respondent has not submitted semiannual compliance reports for Engine 390 or Engine 454.

49. Accordingly, Respondent violated 40 C.F.R § 63.6650 with respect to Engine 390 and Engine 454.

**C. TERMS OF SETTLEMENT**

50. 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 set forth herein.

51. Civil Penalty: Taking into account the particular facts and circumstances of this matter, with specific reference to the penalty factors set forth in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in this CAFO in the amount of ninety-three thousand five hundred dollars (\$93,500).

52. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the civil penalty set forth in Paragraph 51 by submitting a bank, cashier's, or certified check, payable to the order of the "Treasurer, United States of America," to:

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

Respondent shall note the case name and docket number of this matter (*"In the matter of John S.*

*Lane and Son, Inc.*, Docket No. CAA-01-2018-0007”) on the check and in an accompanying cover letter, and shall simultaneously provide copies of the check and cover letter to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100 (ORA18-1)  
Boston, MA 02109-3912

and

John W. Kilborn  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100 (OES04-3)  
Boston, MA 02109-3912

53. If Respondent fails to make the payment by the required due date, the total penalty amount plus all accrued interest, shall become due immediately to the United States upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received by the United States. Respondent shall be liable for such amount regardless of whether EPA has notified Respondent of its failure to pay or made a demand for payment. All payments to the United States under this paragraph shall be made by bank, cashier’s, or certified check as described in Paragraph 52.

54. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim.

55. In the event that any portion of the civil penalty amount described in Paragraph 51 is not paid when due without demand, pursuant to Section 113(d)(5) of the CAA, Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a

nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid when due. In that event, interest will accrue from the due date at the “underpayment rate” established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorney’s fees and collection costs as provided in 42 U.S.C. § 7413(d). In addition, 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 civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

**D. GENERAL PROVISIONS**

56. 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.

57. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

58. Payment of the civil penalty, and any interest, non-payment penalties, and/or other charges set forth in this CAFO does not waive, suspend, or modify the responsibility of Respondent to comply with the requirements of all federal laws and regulations administered by

EPA and shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations.

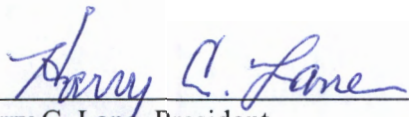
59. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113 of the CAA for the violations alleged in Section B of this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations 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 respond to conditions that may present an imminent and substantial endangerment to public health, welfare, or the environment.

60. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which it is based, or for Respondent's violation of any applicable provision of law.

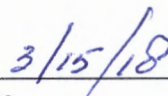
61. Except as described in Paragraph 55, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

62. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR JOHN S. LANE AND SON, INC.

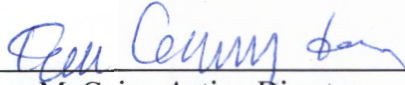


\_\_\_\_\_  
Harry C. Lane, President  
John S. Lane and Son, Inc.



\_\_\_\_\_  
Date

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



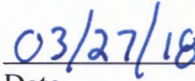
Karen McGuire, Acting Director  
Office of Environmental Stewardship  
U.S. EPA, Region 1



Date



John W. Kilborn, Senior Enforcement Counsel  
Office of Environmental Stewardship  
U.S. EPA, Region 1



Date



**FINAL ORDER**

Pursuant to 40 C.F.R. § 22.18(b) and (c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent is ordered to pay the civil penalty amount specified in the Consent Agreement in the manner specified. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.



LeAnne Jensen  
Acting Regional Judicial Officer  
U.S. EPA, Region 1

3/28/18

Date

In re: John S. Lane and Son, Inc./EPA Docket No. CAA-01-2018-0007

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:

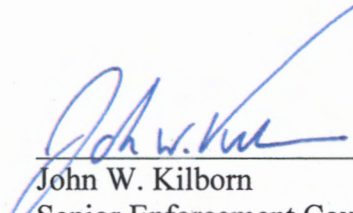
Ms. Wanda Santiago, Regional Hearing Clerk  
U.S. EPA, Region I  
5 Post Office Square, Suite 100  
Boston, MA 02109-3812

Copy, by First Class Mail:

Harry C. Lane, President  
John S. Lane and Son, Inc.  
1550 West Street  
Amherst, MA 01002

Date:

**MAR 29 2018**

  
\_\_\_\_\_  
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](mailto:Kilborn.john@epa.gov)