



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 25 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bruce Weiss, President
Pyramid Paving and Contracting Company
1010 Adams Street
Bay City, Michigan 48732

Dear Mr. Weiss:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Pyramid Paving and Contracting Company, Docket No. CAA-05-2014-0051. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 25 2014.

Pursuant to paragraph 32 of the CAFO, Pyramid Paving and Contracting Company must pay the civil penalty within 30 days of SEP 25 2014. Your check or electronic funds transfer must display the case name Pyramid Paving and Contracting Company and case docket number CAA-05-2014-0051.

Please direct any questions regarding this case to Susan Tennenbaum, Associate Regional Counsel at (312) 886-0273.

Sincerely,

Sarah Marshall
Air Enforcement and Compliance Assurance Section MI/WI

Enclosure

cc: Regional Hearing Clerk/E-19J
Regional Judicial Officer/C-14J
Susan Tennenbaum/C-14J
Chris Hare

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2014-0051
)	
Pyramid Paving and Contracting Company,)	Proceeding to Assess a Civil Penalty
Essexville, Michigan,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Pyramid Paving and Contracting Company (Pyramid), a company doing business in Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Judicial Review and Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to obtain judicial review of this CAFO under Section 113(d)(4) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d)(4), and Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 through 706, its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the CAA, 42 U.S.C. § 7410.

10. On May 6, 1980, EPA approved Michigan Air Pollution Control Commission Rule R336.1201 (Michigan Rule 201), pertaining to Permits to Install, as part of the federally enforceable State Implementation Plan (SIP) for Michigan. 45 Fed. Reg. 29790.

11. Michigan Rule 201 requires that a person shall not install, construct, reconstruct, relocate or alter any process, which may be a source of an air contaminant, until a permit is issued by the commission. This shall be known as a permit to install and shall cover construction, reconstruction, and alteration of equipment where such is involved. A person planning to install, construct, reconstruct, relocate, or alter any process shall apply to the commission for a permit to install.

12. Michigan Department of Environmental Quality (MDEQ) issued Permit to Install No. 260-81B (PTI) to the facility on May 19, 1997.

13. Pursuant to 40 C.F.R. § 52.23, failure to comply with any provisions of this part, or with any approved regulatory provision of a SIP, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated in the SIP, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the CAA. (39 Fed. Reg. 33512, amended at 54 Fed Reg. 27285)

14. Under Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated the Standards of Performance for New Stationary Sources (NSPS) for General Provisions, codified at 40 C.F.R. Part 60, Subpart A. The NSPS for General Provisions applies to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the proposed date of publication of any standard applicable to that facility.

15. The NSPS for General Provisions, at 40 C.F.R. § 60.8(a), requires the owner or operator of Pyramid to conduct performance test(s) within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility and at such other times as may be required by the Administrator under Section 114 of the CAA, and furnish the Administrator a written report of the results of such performance test(s).

16. The NSPS for General Provisions, at 40 C.F.R. § 60.11(d), requires the owner or operator of Pyramid to at all times maintain and operate any affected facility, including

associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions.

17. Under Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated the NSPS for Hot Mix Asphalt Facilities, codified at 40 C.F.R. Part 60, Subpart I. 42 Fed. Reg. 27936, as amended at 51 Fed. Reg. 12325. The NSPS for Hot Mix Asphalt Facilities applies to each hot mix asphalt facility that commences construction or modification after June 11, 1973.

18. The NSPS for Hot Mix Asphalt Facilities, at 40 C.F.R. § 60.92(a)(1), requires the owner or operator of Pyramid, on and after the date on which the performance test required to be conducted by § 60.8 is completed, to not discharge or cause the discharge into the atmosphere from any affected facility any gases which contain particulate matter in excess of 90 mg/dscm (0.04 gr/dscf).

19. The NSPS for Hot Mix Asphalt Facilities, at 40 C.F.R. § 60.92(a)(2), requires the owner or operator of Pyramid, on and after the date on which the performance test required to be conducted by § 60.8 is completed, to not discharge or cause the discharge into the atmosphere from any affected facility any gases which exhibit 20 percent opacity, or greater.

20. The NSPS for Hot Mix Asphalt Facilities, at 40 C.F.R. § 60.93(b), requires the owner or operator of Pyramid to determine compliance with the particulate matter standards in § 60.92 by using Method 5 to determine the particulate matter concentration and Method 9 and the procedures in § 60.11(b) to determine opacity.

21. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day for each violation of the Clean Air Act (the Act), 42 U.S.C. § 7401 *et seq.*, with a maximum of \$295,000, for violations that occurred between January 13, 2009 and December 6, 2013, and 37,500 per day of violations, with a minimum of \$320,000 for violations that occurred

after December 6, 2013 under Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19.

22. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

23. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

24. Pyramid owns and operates a hot mix asphalt facility (facility) at 1503 Pine Avenue, Essexville, Michigan.

25. Pyramid's facility is a hot mix asphalt facility as the term is defined at 40 C.F.R. § 60.91(a). The facility was modified with the installation of a parallel flow drum mixer in April 1997. The facility is subject to the provisions of 40 C.F.R. Part 60, Subparts A and I.

26. On February 22, 2013, EPA issued to Pyramid a Notice and Finding of Violation (NOV/FOV) alleging that it violated the Michigan SIP and the NSPS for Hot Mix Asphalt Facilities by failing to comply with its PTI conditions and failing to demonstrate compliance with particulate matter standards in NSPS.

27. On March 13, 2013, representatives of Pyramid and EPA discussed the NOV/FOV.

28. The NOV/FOV stated that Pyramid violated the General Provisions of the NSPS at 40 C.F.R. § 60.8(a) and that Pyramid failed to demonstrate compliance with the limits of the NSPS for Hot Mix Asphalt Facilities at 40 C.F.R. §§ 60.92(a)(1) and 60.92(a)(2).

29. The NOV/FOV states that Pyramid failed to comply with its PTI, issued pursuant to Rule 201 of the Michigan SIP, in violation of 40 C.F.R. § 52.23.

30. On September 17, 2013, EPA issued to Pyramid an Administrative Consent Order (ACO), requiring the facility to achieve compliance for the violations alleged in the NOV/FOV.

Civil Penalty

31. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$99,055.

32. Within 30 days after the effective date of this CAFO, Respondent must pay a \$99,055 civil penalty by sending by U.S. Postal Service mail a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Or by sending by express mail a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name, docket number of this CAFO.

Respondent may also pay the civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should
read: "D68010727 Environmental Protection Agency"

33. In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Susan Tennenbaum (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

34. This civil penalty is not deductible for federal tax purposes.

35. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the

collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

36. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

37. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

38. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

39. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws.

40. Respondent certifies that it is complying fully with the Michigan SIP and the NSPS, Subpart I.

41. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

- 42. The terms of this CAFO bind Respondent, its successors and assigns.
- 43. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
- 44. Each party agrees to bear its own costs and attorneys' fees in this action.
- 45. This CAFO constitutes the entire agreement between the parties.

Pyramid Paving and Contracting Company, Respondent

9-17-14
Date

Bruce Weiss
Bruce Weiss, President
Pyramid Paving and Contracting Company

United States Environmental Protection Agency, Complainant

9/19/14
Date


George T. Czerniak
George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Pyramid Paving and Contracting Company
Docket No. CAA-05-2014-0051

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/22/2014
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Pyramid Paving and Contracting Company
Docket No. CAA-05-2014-0051

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA05 2014 0051 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Bruce Weiss
Pyramid Paving and Contracting Company
1010 Adams Street
Bay City, Michigan 48732

I certify that I mailed a copy of the CAFO by first-class mail to:

Chris Hare, District Coordinator
Air Quality Division
401 Ketchum Street, Suite B
Bay City, Michigan 48708

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

On the 25 day of September 2014.



Loretta Shaffer
AECAB, Planning and
Administration Section

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7676 2380