



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

REPLY TO THE ATTENTION OF:  
(AE-17J)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Sean Wolf  
Vice President  
Wolf Paving Co., Inc.  
612 North Sawyer Road  
Oconomowoc, Wisconsin 53066

Re: In the Matter of: Wolf Paving Co., Inc.  
Docket No. CAA-05-2008-0029

Dear Mr. Wolf:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Wolf Paving Co., Inc., Docket No. CAA-05-2008-0029. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on January 5, 2009.

Pursuant to paragraph 10 of the CAFO, Wolf Paving Co., Inc. must pay the civil penalty within 30 days of FEB 05 2009. Your check must display the case name, case docket number CAA-05-2008-0029, and the billing document number 2750903A009.

Please direct any questions regarding this case to Padmavati Bending, Associate Regional Counsel, at (312) 353-8917.

Sincerely yours,

Bonnie Bush  
Air Enforcement and Compliance Assurance  
Section (MI/WI)

Enclosure

cc: Don Gallo  
Padma Bending (C-14J)



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JAN 05 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

<b>In the Matter of:</b>	)	<b>Docket No. CAA-05-2008-0029</b>
	)	
<b>Wolf Paving Co., Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Oconomowoc, Wisconsin</b>	)	<b>Under Section 113(d) of the Clean Air</b>
	)	<b>Act, 42 U.S.C. § 7413(d)</b>
<b>Respondent.</b>	)	
_____	)	

**Consent Agreement and Final Order**

1. Complainant, the Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On July 22, 2008, EPA filed the Complaint in this action against Respondent Wolf Paving Co, Inc. (Wolf). The Complaint alleges that Respondent violated Section 111 of the Act, 42 U.S.C. § 7411, and the Particulate Matter limit of the New Source Performance Standards for Hot Mix Asphalt Facilities, 40 C.F.R. §§ 60.90 through 60.93, at its facility in Genesee, Wisconsin.

3. Respondent filed an Answer on August 19, 2008, and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

**Stipulations**

4. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual or legal allegations in the Complaint other than those it admitted in its Answer.

5. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).

6. Respondent certifies that it is complying fully with New Source Performance

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MAY 20 2008

Standards for Hot Mix Asphalt Facilities.

REGIONAL HEARING CLERK  
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7. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

**Civil Penalty**

9. In consideration of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), including the facts of this case, the nature of the violations, the cooperation demonstrated by Wolf, Wolf's agreement to perform Supplemental Environmental Projects, and other relevant factors, Complainant agrees to mitigate the proposed penalty of \$ 114,740 to \$ 20,080.

10. Within 30 days after the effective date of this CAFO, Respondent must pay the \$ 20,080 civil penalty by one of the following options:

a. Sending via U.S. Postal Service mail a cashier's or certified check payable to the "Treasurer, United States of America," to:

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

The check must note the case name, docket number of this CAFO, and the billing document number.

b. Sending via a carrier that will not deliver to P.O. Boxes (e.g. express carrier) a cashier's or certified check payable to the "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 the case name, docket number of this CAFO, and the billing document number.

c. Sending via electronic funds transfer payable to the "Treasurer, United States of America," 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"

In the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO, and the billing document number.

11. If paying by check, a transmittal letter stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Wolf must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

Padmavati Bending, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

12. This civil penalty and any stipulated penalties under Paragraph 30, below, are not deductible for federal tax purposes.

13. If Wolf does not pay timely the civil penalty, or any stipulated penalties due under Paragraph 30, below, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

14. Pursuant to 31 C.F.R. § 901.9, Wolf 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. Wolf must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Wolf must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

**Supplemental Environmental Project**

15. Respondent must complete the two supplemental environmental projects (SEPs) described in Paragraph 16, below, designed to protect the environment and public health by decreasing particulate matter emissions.

16. At its Genesee, Wisconsin facility, Respondent must complete the following two SEPs. The first SEP is paving approximately 6,185 square yards of the facility work area which was previously not paved with 2 inches of hot mix asphalt binder and 1 inch of hot mix asphalt surface mix. The second SEP is the purchase of a used street sweeper which Respondent will use on a regular basis to sweep and collect particulate material from both the existing and new asphalt areas at the facility.

17. Respondent must spend at least \$66,900 for the paving project.

18. Respondent must spend at least \$30,000 for the street sweeper project.

19. Respondent must begin the paving project no later than January 1, 2009 and complete the project by July 30, 2009.

20. Respondent must purchase a used street sweeper for at least the amount required in Paragraph 18, above, no later than May 1, 2009.

21. Respondent must use the street sweeper to sweep and collect particulate material from existing and new asphalt areas at the facility pursuant to the Wolf Paving Pavement Fugitive Dust Control Plan dated December 9, 2008, Attachment A to this CAFO.

22. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

23. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

24. Respondent must submit a SEP completion report to EPA for each of the SEPs listed in Paragraph 16, above, within 30 days of completion of the paving project and within 30

days of purchase of the street sweeper. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

25. Respondent must submit, on a monthly basis for 12 consecutive months, a report on the use of the street sweeper. The report must contain the following information:

- a. The frequency of use of the street sweeper on each day of the month.
- b. When the street sweeper is unable to be operated on any particular day of the month, an explanation as to why the street sweeper could not be used.

26. Respondent must submit all notices and reports required by this CAFO by first class mail to:

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

27. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant



penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

28. Following receipt of each SEP completion report described in Paragraph 24, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under Paragraph 30, below.

29. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 30, below.

30. If Respondent violates any requirement of this CAFO relating to the SEPs, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent spent less than the amount set forth in Paragraph 17, above, for the paving SEP, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in Paragraph 17.
- b. If Respondent spent less than the amount set forth in Paragraph 18, above, for the street sweeper SEP, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in Paragraph 18.
- c. If Respondent halts or abandons work on the paving SEP, Respondent must pay a stipulated penalty of \$44,600 in addition to any penalty required under subparagraph 30.a, above. The penalty will accrue as of the date for completing

the SEP or the date performance ceases, whichever is earlier.

- e. If Respondent halts or abandons work on the street sweeper SEP, Respondent must pay a stipulated penalty of \$20,000 in addition to any penalty required under subparagraph 30.b, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- f. If Respondent fails to comply with the schedule in Paragraphs 19 through 21, above, for implementing the respective SEP or fails to submit timely the SEP Completion Reports required by Paragraph 24, above, or fails to submit the monthly reports on the use of the street sweeper as required by Paragraph 25, above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1 <sup>st</sup> through 20 <sup>th</sup> day
\$ 500	21 <sup>st</sup> through 30 <sup>th</sup> day
\$ 750	31 <sup>st</sup> day and beyond.

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

31. EPA's determination of whether Respondent satisfactorily completed the SEPs will bind Respondent.

32. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraph 10, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

33. Any public statement that Respondent makes referring to the SEPs must include the following language, "Wolf undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Wolf for alleged violations of Clean Air Act requirements related to the NSPS for Hot Mix Asphalt Facilities."

34. If an event occurs which causes or may cause a delay in completing the SEPs as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 calendar days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Wolf in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased cost for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

35. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEPs.

#### **General Provisions**

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

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

38. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in Paragraph 36, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

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

40. The terms of this CAFO bind Respondent, its successors, and assigns.

41. 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.


42. Each party agrees to bear its own cost and attorneys’ fees in this action.

43. This CAFO constitutes the entire agreement between the parties.

44. This CAFO terminates after EPA has received and reviewed the 12<sup>th</sup> report required under Paragraph 25, above.

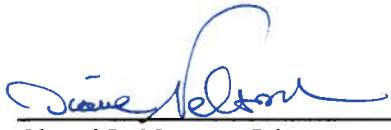
**Wolf Paving Co., Inc., Respondent**

12/17/08  
Date

  
Sean Wolf, Vice President  
Wolf Paving Co., Inc.

**United States Environmental Protection Agency, Complainant**

12/30/08  
Date

  
Cheryl L. Newton, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5

**CONSENT AGREEMENT AND FINAL ORDER**  
**Wolf Paving Co., Inc.**  
**CAA-05-2008-0029**

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**Final Order**

This Consent Agreement and Final Order, as agreed to by 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.

1/2/09  
Date

*Lynn Buhl*  
for Lynn Buhl  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

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**ATTACHMENT A**

**Wolf Paving Pavement Fugitive Dust Control Plan dated December 9, 2008**

# WOLF PAVING PAVEMENT FUGITIVE DUST CONTROL PLAN

December 9, 2008

## I. BACKGROUND

### A. Contact Information

Company: Wolf Paving Co., Inc.  
Address: 612 N. Sawyer Rd.  
City: Oconomowoc, WI 53066  
Phone: (262) 965-2121  
Contact: Sean Wolf

B. Plant: Wolf Paving Co., Inc. ("Wolf") owns and operates a batch, hot mix asphalt plant located at Highway 18 and County Road C in Genesee, Wisconsin (the "Site"). (See Site map at Tab A).

C. Purpose of Plan: To minimize fugitive dust and control dust emissions during vehicular traffic operations at the Site.

## II. PAVED DRIVEWAYS/PARKING AREAS

Tab A shows the existing paved area at the asphalt plant including the existing access roadway and also the proposed additional asphalt paved area. Fugitive dust may be emitted from or stirred up by trucks and vehicles exiting and entering the asphalt plant area. This plan shall apply to all paved areas, including the access driveway.

## III. DUST CONTROL PROCEDURES

### A. Paved Driveways/Parking Areas

1. Wolf shall purchase a self-propelled street sweeper (the "Sweeper") to control dust at the Site.
2. Wolf shall operate this mobile sweeper to clean the paved areas at the site including the access roadway. This cleaning shall be conducted every day so as to minimize fugitive dust; however,
  - (a) Wolf will not sweep in windy conditions and shall coordinate sweeping to avoid windy conditions, i.e., by sweeping early in the morning; and
  - (b) Wolf will not sweep if the paved areas are covered with snow, ice, or water from a recent rain.

3. If visible dust occurs at or above 20 percent opacity, Wolf shall promptly initiate sweeping to clean the pavement areas.
4. If sweeping is not performed on a regularly scheduled day due to weather conditions, resume sweeping as required by pavement conditions.
5. Promptly clean material spilled onto any driveway or parking area.
6. Monitor dust control efforts regularly to ensure adequate control is achieved and maintain an inspection and cleaning log.
7. Wolf shall also coordinate sweeping with use of a water applying vehicle under severe dust conditions.
8. Sweeping shall be conducted from when the asphalt plant starts up for the construction season (usually around mid-May depending upon the weather) until the asphalt plant is shut down in late fall (usually around Thanksgiving or early December).

#### IV. TRAINING, MAINTENANCE AND RECORDKEEPING

- A. Responsibility. The asphalt plant facility manager is responsible for training, maintenance and recordkeeping regarding the Sweeper. He is also responsible for ensuring that timely sweeping occurs.
- B. Training/Log. All new employees who shall operate the Sweeper will be trained on this Pavement Fugitive Dust Control Plan upon being hired by Wolf. All existing employees who shall operate the Sweeper will be trained on this Dust Control Plan by January 1, 2009 or upon hiring. A training log will be maintained at the Site for three years. (See sample Training Log at Tab B.)
- C. Cleaning Log. A log of all sweeping/cleaning/water application of driveways and parking areas at the Site will be maintained at the Site for three years. (See sample Cleaning Log at Tab C.)
- D. Maintenance Log. A log of all Sweeper maintenance will be maintained at the Site for three years. (See sample Maintenance Log at Tab D.)



(TAB A)

SITE MAP  
WOLF PAVING CO., INC., GENESEE, WISCONSIN







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JAN 05 2009

**CONSENT AGREEMENT AND FINAL ORDER**  
**Wolf Paving Co., Inc.**  
**CAA-05-2008-0029**

**REGIONAL HEARING CLERK**  
**U.S. ENVIRONMENTAL**  
**PROTECTION AGENCY**

**Certificate of Service**

I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-13J), United States Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, that I mailed by Certified Mail, Receipt No. [ ], the second original to Respondent, addressed as follows:

Sean Wolf  
Vice President  
Wolf Paving Co., Inc.  
612 North Sawyer Road  
Oconomowoc, Wisconsin 53066


with a copy to Respondent's counsel:

Donald P. Gallo  
Reinhart Boerner Van Deuren s.c.  
P.O. Box 2265  
Waukesha, Wisconsin 53187-2265

and that I mailed a correct copy by first class, United States mail, addressed as follows:

Honorable Judge Moran  
United States Environmental Protection Agency  
Office of Administrative Law Judges  
Mailcode 1900L/Ariel Rios Building  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

On the 5<sup>th</sup> day of January, 2009.

  
Tracy Jamison  
Office Automation Clerk  
AECAS, (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0189 6094

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