

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Laura J. Berry 5/30/17
Name of Case Attorney Date

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

Case Docket Number CAA-01-2017-0040

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:

Kimball Sand Company, Inc.
202 Elm Street
Blackstone, MA 01504

Total Dollar Amount of Receivable \$ 120,000 Due Date: 6/29/17

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ _____ on _____
2nd \$ _____ on _____
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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I – New England
5 Post Office Square - Suite 100
Boston, Massachusetts 02109-3912

BY HAND

May 30, 2017

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square - Suite 100 (ORA 18-1)
Boston, MA 02109-3912



Re: *In the matter of Kimball Sand Company, Inc.*, Docket No. CAA 01-2017-0040

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Consent Agreement and Final Order; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

A handwritten signature in blue ink that reads "Laura J. Berry".

Laura J. Berry
Enforcement Counsel

Enclosures

cc: Ruth Silman, Esq. (Respondent's counsel)
Thomas McCusker, OES, EPA Region 1

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

)	
IN THE MATTER OF)	
Kimball Sand Company, Inc.)	Docket No. CAA-01-2017-0040
Proceeding under Section)	
113 of the Clean Air Act)	
)	

CONSENT AGREEMENT AND FINAL ORDER

1. The United States Environmental Protection Agency, Region 1 (“EPA” or “Complainant”) alleges that Kimball Sand Company, Inc. (“Kimball Sand” or “Respondent”) violated certain provisions of (1) 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 (2) 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 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 in amounts up to \$37,500 per day for violations of the CAA occurring between January 13, 2009 and November 2, 2015, and up to \$45,268 per day for violations of the CAA occurring after November 2, 2015 and assessed on or after January 15, 2017.

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 12 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 \$362,141. Although this CAFO alleges violations that commenced more than 12 months ago, EPA and DOJ have jointly determined that this matter is appropriate for an administrative penalty action.

B. EPA FINDINGS

General Findings

13. In or around 1985, Respondent began its stone crushing and gravel processing operations at 202 Elm Street in Blackstone, Massachusetts ("the Blackstone Facility"). The Blackstone Facility is a fixed nonmetallic mineral processing plant, as defined at 40 C.F.R. § 60.671, with a capacity of 450 tons per hour.

14. In or around 1995, Respondent began its stone crushing and gravel processing

operations at 200 Southwest Cutoff in Northborough, Massachusetts (the “Northborough Facility”). The Northborough Facility is a fixed nonmetallic mineral processing plant, as defined at 40 C.F.R. § 60.671, with a capacity of at least 350 tons per hour.

15. EPA conducted on-site inspections of the Blackstone and Northborough Facilities on December 16, 2015, and April 14, 2016, respectively.

16. On October 14, 2016, EPA issued a Notice of Violation (“NOV”) to Respondent for the Blackstone and Northborough Facilities. The NOV described EPA’s findings that Respondent had violated certain CAA requirements relating to the Nonmetallic Mineral Processing NSPS and the RICE NESHAP.

17. At the time of EPA’s inspection, Respondent operated the following equipment at the Blackstone Facility:

- a. One Telesmith Model 3258 primary jaw crusher, two Nordberg secondary cone crushers, and a number of associated screeners and conveyers; and
- b. A non-emergency, stationary Caterpillar Model 3412 diesel engine/generator with Serial number BLG00423 (“Blackstone Engine 1”) and a non-emergency, stationary Caterpillar Model 3406 diesel engine/generator with Serial number 90U10303 (“Blackstone Engine 2”).

18. On or about March 17, 2016, Respondent ceased using Blackstone Engine 1 and Blackstone Engine 2 and replaced them with two non-emergency, stationary Caterpillar Model C27 diesel engine/generators, each with a horsepower rating of 1207 (the “New Blackstone Engines”). Respondent represents that only one of the two New Blackstone Engines operates at the Blackstone Facility at any given time.

19. At the time of EPA’s inspection, Respondent operated the following equipment at

the Northborough Facility:

- a. One Cedar Rapids Model 3042 primary jaw crusher, one Cedar Rapids Model 54II secondary cone crusher, and a number of associated screeners and conveyers; and
- b. One non-emergency, stationary Caterpillar Model C27 diesel engine/generator, with a horsepower rating of 1207 (the “New Northborough Engine”).

20. The stationary Caterpillar Model C27 diesel engine/generator referenced in paragraph 19.b above was installed at the Northborough Facility on March 17, 2016. This engine replaced a stationary Caterpillar Model 3412 diesel engine/generator, Serial number 81Z25205, that was installed at the Northborough Facility in or around 2000 (“Northborough Engine 1”).

21. The New Blackstone Engines and the New Northborough Engine are subject to the New Source Performance Standards for Stationary Compression Ignition Internal Combustion Engines found at 40 C.F.R. Part 60, Subpart IIII.

Specific Findings

Alleged Violations of Nonmetallic Mineral Processing NSPS

22. The Nonmetallic Mineral Processing NSPS apply to fixed sand and gravel plants with a capacity of more than 25 tons per hour. 40 C.F.R. § 60.670(c).

23. 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).

24. Respondent's various crushers, screeners, and belt conveyers at the Blackstone and Northborough Facilities are "affected facilities" under the Nonmetallic Mineral Processing NSPS.

25. 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).

26. Pursuant to 40 C.F.R. § 60.672(b), Standard for Particulate Matter, affected facilities without capture systems, such as Respondent's two facilities, must meet the fugitive emission limits and compliance requirements in Table 3 of this subpart within 60 days after achieving the maximum production rate at which the facilities will be operated, but no later than 180 days after initial startup as required under 40 C.F.R. § 60.11.

27. 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).

28. Respondent initially started up its nonmetallic mineral processing operations at its Northborough Facility in 1995. Therefore, Respondent was required, at the very latest, 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 some date in 1995 or 1996 for its Northborough Facility.

29. Respondent did not conduct EPA Reference Method 9 visible emission testing to determine fugitive emissions from subject equipment (*e.g.*, the crushers, screeners, and conveyor belts) at the Northborough Facility until June 30, 2016.

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

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

32. Respondent did not provide a notification of the actual date of initial startup for its stone crushing and gravel processing equipment at the Blackstone Facility until January 6, 2016.

33. Respondent did not provide a notification of the actual date of initial startup for its stone crushing and gravel processing equipment at the Northborough Facility until April 20, 2016.

34. Accordingly, Respondent violated 40 C.F.R. § 60.676(i) at each facility.

Alleged Violations of RICE NESHAP

35. 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.

36. The Blackstone and Northborough Facilities are considered “area sources” for HAP emissions because the available evidence suggests that neither facility has 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).

37. 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.

38. Blackstone Engine 1, which was installed on August 22, 2003, had a horsepower rating of 1186.

39. Blackstone Engine 2, which was installed on October 20, 2001, had a horsepower rating of 260.

40. Northborough Engine 1, which was installed on July 24, 2000, had a horsepower rating of 913.

41. Blackstone Engine 1, Blackstone Engine 2, and Northborough Engine 1 were all existing RICE units subject to the RICE NESHAP from the time that they were installed until they were replaced on March 17, 2016.

42. 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.

43. Respondent did not submit the required initial notification for Blackstone Engine 1, Blackstone Engine 2, or Northborough Engine 1.

44. Accordingly, Respondent violated 40 C.F.R §§ 63.6645 and 63.9(b) with respect to each engine described in Paragraph 43.

45. 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 any 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). Blackstone Engine 1 and Northborough Engine 1 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 these engines/generators was October 30, 2013.

46. Respondent did not conduct an initial performance test or initial compliance demonstration on Blackstone Engine 1 or Northborough Engine 1.

47. Accordingly, Respondent violated 40 C.F.R §§ 63.6612(a) and 63.7(a)(2) with respect to each engine described in Paragraph 46.

48. 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.

49. Respondent did not submit a notification of compliance status for Blackstone Engine 1, Blackstone Engine 2, or Northborough Engine 1.

50. Accordingly, Respondent violated 40 C.F.R §§ 63.6645 and 63.9(h) with respect to each engine described in Paragraph 49.

51. 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.

52. Respondent did not submit semiannual compliance reports for Blackstone Engine 1 or Northborough Engine 1.

53. Accordingly, Respondent violated 40 C.F.R § 63.6650 with respect to each engine described in Paragraph 52.

54. 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 Subpart ZZZZ.

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

- a. Limit the concentration of carbon monoxide (“CO”) in the stationary RICE exhaust to 23 parts per million, volumetric dry (“ppmvd”) at 15 percent oxygen; or
- b. Reduce CO emissions by 70 percent or more.

56. Respondent did not meet the requirements of Table 2d described in paragraph 55 above for Blackstone Engine 1 or Northborough Engine 1.

57. Accordingly, Respondent violated 40 C.F.R § 63.6603 with respect to each engine described in Paragraph 56.

C. TERMS OF SETTLEMENT

58. 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.

59. 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 one hundred twenty thousand dollars (\$120,000).

60. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the civil penalty set forth in paragraph 59 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 Kimball Sand Company, Inc.*, Docket No. CAA-01-2017-0040") 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

Laura J. Berry
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100 (OES04-2)
Boston, MA 02109-3912

61. 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 60.

62. 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.

63. In the event that any portion of the civil penalty amount described in paragraph 59 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

64. 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.

65. 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.

66. 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.

67. 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 which may present an imminent and substantial endangerment to public health, welfare, or the environment.

68. 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 the Complaint and this CAFO is based, or for Respondent's violation of any applicable provision of law.

69. Except as described in paragraph 63, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such

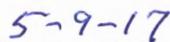
costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

70. 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 KIMBALL SAND COMPANY, INC.

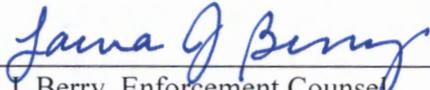


Robert Kimball, President
Kimball Sand Company, Inc.

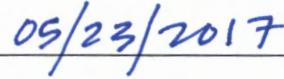


Date

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



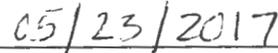
Laura J. Berry, Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA, Region I



Date



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



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.

Sharon Wells

Sharon Wells
Acting Regional Judicial Officer
U.S. EPA, Region 1

5/25/17

Date

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

_____)	
IN THE MATTER OF)	Docket No. CAA-01-2017-0040
Kimball Sand Company, Inc.)	
Proceeding under Section)	CONSENT AGREEMENT
113 of the Clean Air Act)	AND FINAL ORDER
_____)	

CERTIFICATE OF SERVICE

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

Original and one copy,
hand-delivered:

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

Copy, by Certified Mail,
Return Receipt Requested:

Ruth H. Silman, Esq. (Respondent's counsel)
Nixon Peabody LLP
100 Summer Street
Boston, MA 02110-2131

Dated: 5/30/17



Laura J. Berry
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-2)
Boston, MA 02109-3912
Tel (617) 918-1148
Fax (617) 918-0148