

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:

AGA Environmental, Inc.,

Respondent ,

In a proceeding under Section 113(d)  
of the Clean Air Act, 42 U.S.C. § 7413(d)

CONSENT AGREEMENT  
AND  
FINAL ORDER

CAA-02-2012-1225

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 MAR -7 A 8:32  
REGIONAL HEARING  
CLERK

Preliminary Statement

This Consent Agreement and Final Order (CAFO) resolves an administrative penalty proceeding brought by the Complainant, the Director of the Division of Enforcement and Compliance Assistance for the United States Environmental Protection Agency ("EPA") Region 2, against AGA Environmental, Inc. (AGA), pursuant to Section 113(d) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7413(d), and EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP), 40 C.F.R. Part 22. The proceeding was commenced by the filing of a Complaint and Notice of Opportunity to be Heard (Complaint) on September 28, 2012.

The Consent Agreement portion of this CAFO is signed by Complainant and AGA, while the Final Order portion is to be executed by the EPA Region 2 Regional Judicial Officer. Pursuant to EPA Region 2 Delegation of Authority 7-6-A, the Complainant is delegated the authority, in Region 2, to issue CAA Section 113(d) administrative penalty complaints, and to

agree to settlements and sign consent agreements memorializing those settlements. Pursuant to EPA Delegation of Authority 7-6-C, the Regional Judicial Officer of EPA Region 2 is delegated the authority, in Region 2, to execute CAA Section 113(d) Final Orders.

### **Consent Agreement**

#### **General Provisions**

1. The Complainant and AGA enter into this Consent Agreement and propose the attached Final Order to resolve an administrative civil penalty proceeding that was commenced by EPA's Complaint and Notice of Opportunity to Be Heard (Complaint), dated September 28, 2012.
2. Consistent with CROP 22.18(c), this Consent Agreement and the attached Final Order only resolve AGA's liability for Federal civil penalties for the violations and facts alleged in the Complaint.
3. As required by CROP 22.18(b), for the purposes of this administrative civil penalty proceeding, and to avoid the expense of protracted litigation, AGA:
  - a. Admits the jurisdictional allegations of the Complaint (namely, the allegations found in Paragraphs 1-4 and 20 of the Complaint);
  - b. Neither admits nor denies the factual allegations found in Paragraphs 21-27 of the Complaint;
  - c. Consents to the payment of the civil penalty specified below in the "Settlement" section of this Consent Agreement, on the terms specified in that section;
  - d. Consents to the issuance of the attached Final Order; and
  - e. Waives any right to contest the Complaint's allegations and any right to appeal the attached Final Order.

Settlement

4. Pursuant to Section 113(d) of the Act, AGA shall pay a civil penalty of **\$12,000.00**. AGA shall pay the entire amount in three equal quarterly payments of \$4000.00. The first payment within thirty (30) days from the date of issuance of the attached Final Order (the Due Date), and an equal payment each of the subsequent two quarters. AGA has the choice of paying by corporate, cashiers' or certified check. AGA shall: (1) clearly type or write the docket number (CAA-02-2012-1225) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America," and (3) send the check to:

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

AGA shall send notice of payment to the following:

Kenneth Eng, Air Compliance Branch Chief  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency—Region 2  
290 Broadway—21st Floor  
New York, New York 10007

and

John Dolinar  
Office of Regional Counsel  
U.S. Environmental Protection Agency—Region 2  
290 Broadway—16th Floor  
New York, New York 10007

5. If AGA fails to make full and complete payment of the civil penalty that it is required to pay by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, AGA shall pay the following amounts:

- a. Interest. If AGA fails to make payment, or make partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If AGA fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, AGA shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of AGA's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

6. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of AGA's alleged violations of the Act set forth in the Complaint.

7. Nothing in this Consent Agreement and attached Final Order shall relieve AGA of the duty to comply with all applicable provisions of the Clean Air Act and other environmental laws and it is the responsibility of the AGA to comply with such laws and regulations.

8. This Consent Agreement and attached Final Order shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

9. This Consent Agreement, attached Final Order, and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.

10. AGA explicitly waives any right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives any right to appeal the attached Final Order.

11. AGA waives any right they may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator, Regional Judicial Officer, or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

12. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in this action resolved by this Consent Agreement and attached Final Order.

13. The Consent Agreement and attached Final Order shall be binding on AGA and their successors and assignees.

Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

Signatures

For Complainant:

\_\_\_\_\_

Date \_\_\_\_\_

Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
United States Environmental  
Protection Agency, Region 2

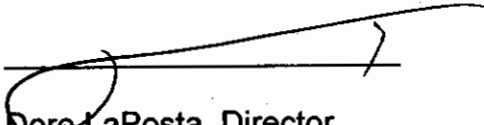
For Respondent AGA Environmental, Inc.

\_\_\_\_\_

Date \_\_\_\_\_

Signatures

For Complainant:



Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
United States Environmental  
Protection Agency, Region 2

Date FEBRUARY 27, 2013

For Respondent: AGA Environmental, Inc.



Date \_\_\_\_\_

AGA Environmental, Inc.  
CAA-02-2012-1225

**FINAL ORDER**

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of *AGA Environmental, Inc. CAA-02-2012-1225*. The Consent Agreement, entered into by Complainant and Respondent AGA Environmental, Inc., is hereby approved and issued, as a Final Order, effective upon filing with the Regional Hearing Clerk.

DATE: February 28, 2013

Helen Ferrara

Helen Ferrara  
Regional Judicial Officer  
United States Environmental  
Protection Agency, Region 2



**Certificate of Service**

I certify that on March 6, 2013, I caused the foregoing Consent Agreement and Final Order in the matter of *AGA Environmental, Inc.*, CAA-02-2012-1255, to be served on the following people in the manner listed below:

*One Original and One Copy, by hand delivery to:*

✓ Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

*One Copy, by hand delivery to:*

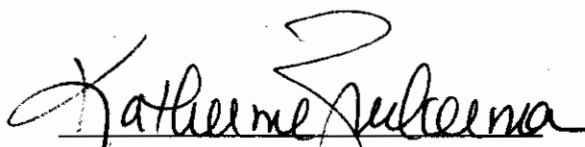
John Dolinar  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Helen S. Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

*One Copy, by Overnight Delivery to:*

Mr. Gilberto Padilla  
AGA Environmental, Inc.  
1804 Plaza Avenue  
New Hyde Park, NY 11040

Dated: March 6, 2013

  
Katherine Zuckerman  
Air Branch Secretary  
U.S. Environmental Protection Agency  
Office of Regional Counsel, Region 2