



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

**MAR 31 2015**

REPLY TO THE ATTENTION OF:

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

Erica Grant, VP of Operations  
Atlas Resin Proppants, LLC  
W 10899 Cherry Road  
Merrillan, Wisconsin 54754

Dear Ms. Grant:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket No. CAA-05-2015-0026. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on March 31, 2015.

Pursuant to paragraph 24 of the CAFO, Atlas must pay the civil penalty within 30 days of April 30, 2015. Your check must display the case name Atlas Resin Proppants, LLC and the docket number CAA-05-2015-0026.

Please direct any questions regarding this case to Robert Peachey, Associate Regional Counsel, 312-353-4510.

Sincerely,

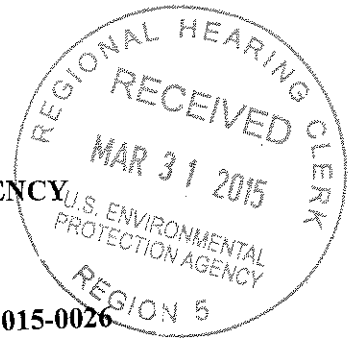
A handwritten signature in black ink, appearing to read "Nathan A. Frank".

Nathan A. Frank  
Air Enforcement and Compliance Assurance Branch (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Robert Peachey/C-14J  
Todd Palmer, Michael Best & Friedrich LLP  
Bill Baumann, WDNR  
Rick Wulk, WDNR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of: ) Docket No. CAA-05-2015-0026  
)  
Atlas Resin Proppants, LLC ) Proceeding to Assess a Civil Penalty  
Merrillan, Wisconsin ) 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 Atlas Resin Proppants, LLC (Atlas), a corporation doing business in Wisconsin.

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) and 22.18(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 Hearing**

7. For purposes of this proceeding, 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 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. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, each State is responsible for submitting to EPA for approval an implementation plan which specifies how the State will achieve, maintain, and enforce all primary and secondary National Ambient Air Quality Standards in the State.

10. Under Section 110(a) of the CAA, each SIP must include a permit program, enforceable emission limitations, control measures, and schedules for compliance. Upon EPA's approval of a SIP, the plans become independently enforceable by the federal government, as stated under Section 113(a) of the CAA, 42 U.S.C. § 7413(a).

11. "Major Stationary Source" is defined in Wisconsin Administrative Code (WAC) NR 407.02(4)(b) as any source which "emits, or has the potential to emit, 100 tpy [tons per year] or more of any air contaminant subject to regulation" under the CAA, and "Synthetic Minor Source" is defined in WAC NR 407.02(9) as any stationary source that has its potential to emit limited by federally-enforceable permit conditions so that it is not a major source.

12. Section 113(a)(1) of the CAA authorizes the Administrator to initiate an enforcement action whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of an applicable implementation plan or permit.

13. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred between January 12, 2009, and December 6, 2013, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

14. 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.

15. 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**

16. Atlas owns and operates a resin coated sand production facility at W 10899 Cherry Road, Merrilan, Wisconsin (the Merrilan Facility).

17. The Merrilan Facility operates under Synthetic Minor Non-Part 70 Operation Permit No. 627019690-F01 (Operating Permit) issued by the Wisconsin Department of Natural Resources (WDNR) on December 4, 2012.

18. The Merrilan Facility includes four resin-coated sand production lines, known as Towers C, D, E, and F and identified in the Operating Permit as Processes P250, P350, P450, and P550, respectively.

19. The Operating Permit requires the Merrilan Facility to limit phenol emissions to 0.43 pounds per hour for each resin-coated sand production line.

20. EPA sent a request for information to Atlas pursuant to Section 114 of the CAA on June 13, 2013. The request included the requirement to conduct stack testing for phenol, formaldehyde, and total volatile organic compounds (VOC) on each of its four production lines at the Merrillean Facility.

21. Atlas conducted the stack test on November 4-6, 2013. Atlas provided preliminary test results to EPA on January 31, 2014, and provided the final stack test results and report to EPA on February 13, 2014.

22. The stack test of November 6, 2013 for Tower F (P550) showed that phenol emissions were 1.01 lb/hr, in exceedance of the federally enforceable Operating Permit's 0.43 lb/hr limit.

#### Civil Penalty

23. 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 Respondent's cooperation, prompt return to compliance, and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$8,500.

24. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,500 civil penalty by sending 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, for checks sent by express mail (non-U.S. Postal Service won't deliver mail to P.O. Boxes), by sending 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 and docket number of this CAFO.

25. 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

Robert M. Peachey (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

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

27. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 38, below, 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.

28. 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).

**Supplemental Environment Project**

29. Respondent must complete a supplemental environmental project (SEP) designed to protect public health by improving ambient air quality and to reduce environmental asthma triggers and adverse respiratory health conditions.

30. Respondent must complete the SEP by tendering \$40,000 by May 30, 2015 to the School District of Alma Center-Humbird-Merrillan (Merrillan School District) in Merrillan, Wisconsin for the conversion of the HVAC systems at Lincoln Elementary School from pneumatic temperature controls to new direct digital temperature controls, pursuant to a written agreement with the Merrillan School District that the funds will be used to complete the project described in this paragraph. The Merrillan School District is solely responsible for completing the digital temperature control conversion, and Complainant and Respondent anticipate this being completed by June 30, 2015.

31. Respondent must spend at least \$40,000 to fund the SEP.

32. Respondent certifies as follows:

I certify that Atlas is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am

signing this CAFO. I further certify that Atlas has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that neither Atlas nor the Merrilan School District is a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

33. Respondent must submit a SEP completion report to EPA within 30 days of the Merrilan School District completing the digital temperature control conversion described in paragraph 30. This report must contain the following information:

- a. Detailed description of the digital temperature control conversion as completed;
- b. Description of any problems experienced by the Merrilan School District completing the digital temperature control conversion, and the actions taken to correct the problems;
- c. Itemized cost of goods and services purchased by Merrilan School District using funds provided pursuant to the SEP, documented by copies of invoices, purchase orders or cancelled 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 digital temperature control conversion (quantify the benefits and pollution reductions, if feasible).

34. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 25, above.



35. 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.

36. Following receipt of the SEP completion report described in paragraph 33, 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 38.

37. 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 38, below.

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

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO (i.e., Respondent fails to tender the payment described in paragraph 30), Respondent must pay a penalty of \$5,000, plus the \$40,000 required under paragraph 30.

- b. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 30, Respondent must pay a penalty of \$5,000 plus the difference between \$40,000 and the amount that Respondent spent to complete the SEP.
- c. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$200	1 <sup>st</sup> through 14 <sup>th</sup> day
\$400	15 <sup>th</sup> through 30 <sup>th</sup> day
\$600	31 <sup>st</sup> day and beyond

39. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

40. 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 24, above, and will pay interest and nonpayment penalties on any overdue amounts.

41. Any public statement that Respondent makes referring to the SEP must include the following language: "Atlas undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Atlas for violations of the Clean Air Act."

42. If an event occurs which causes or may cause a delay in completing the SEP (i.e., Respondent tendering the \$40,000 payment required by paragraph 30) as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 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 Respondent 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 costs 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.

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

#### General Provisions

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

45. 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.

46. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 44, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

47. Respondent certifies that it is complying fully with the provisions of its operating permit.

48. 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).

49. The terms of this CAFO bind Respondent, its successors and assigns.
50. 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.
51. Each party agrees to bear its own costs and attorneys' fees in this action.
52. This CAFO constitutes the entire agreement between the parties.

**Consent Agreement and Final Order**  
**In the Matter of: Atlas Resin Proppants, LLC**  
**Docket No. CAA-05-2015-0026**

**Atlas Resin Proppants, LLC, Respondent**

3/23/15  
Date

Erica Grant  
Erica Grant  
Vice President of Operations  
Atlas Resin Proppants, LLC

**United States Environmental Protection Agency, Complainant**

3/27/15  
Date

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

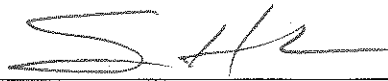
**Consent Agreement and Final Order**  
**In the Matter of: Atlas Resin Proppants, LLC**  
**Docket No.**

**CAA-05-2015-0026**

**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.

3/31/2015  
Date

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

Consent Agreement and Final Order  
In the Matter of: Atlas Resin Proppants, LLC  
Docket No: **CAA-05-2015-0026**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CAA-05-2015-0026**, which was filed on **MAR 31 2015**, this day in the following manner to the following addressees:

Copy by (Certified Mail  
Return-Receipt Requested

Erica Grant, VP of Operations  
Atlas Resin Proppants, LLC  
W 10899 Cherry Road  
Merrillan, Wisconsin 54754

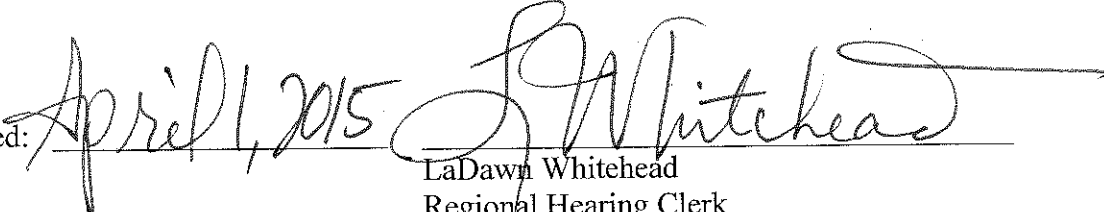
Copy by E-mail to  
Attorney for Complainant:

Robert Peachey, Associate Regional Counsel  
[peachey.robert@epa.gov](mailto:peachey.robert@epa.gov)

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: April 1, 2015

  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 7360