

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
2 REGION 9
3 BEFORE THE ADMINISTRATOR

FILED

2007 SEP 28 AM 8:02

U.S. EPA REGION IX
REGIONAL HEARING CLERK

4 In the Matter of:

5 Salt River Project Agricultural
6 Improvement and Power District

7 Proceeding under Section 113 of the
8 Clean Air Act, 42 U.S.C. § 7413

Docket No. CAA-09-2007- 0034

9 CONSENT AGREEMENT AND FINAL
10 ORDER PURSUANT TO 40 C.F.R.
11 §§ 22.13 and 22.18

12 I. JURISDICTION AND AUTHORITY

13 1. Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q ("CAA" or
14 "Act") and 40 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b) of the
15 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, the
16 Director of the Air Division ("Complainant"), U.S. Environmental Protection Agency ("EPA"),
17 Region 9, is simultaneously commencing and concluding this proceeding against the Salt River
18 Project Agricultural Improvement and Power District ("Salt River Project") through the filing
19 of this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18
20 ("CAFO").

21 2. Complainant has been duly delegated the authority to file this action and sign a consent
22 agreement settling this action.

23 3. Section 113(d)(1) of the Act limits EPA's authority to issue administrative complaints to
24 matters where the total penalty sought does not exceed \$270,000,¹ and the first alleged date of
25 violation occurred no more than 12 months prior to the initiation of the action, unless EPA and
26 the Attorney General for the U.S. Department of Justice ("DOJ") jointly determine that a matter
27 involving a larger penalty or longer period of violation is appropriate for administrative action.
28 Because this CAFO contains alleged violations that occurred more than 12 months ago,

¹ As adjusted for inflation under the Debt Collection Improvement Act and implementing regulations at 40 C.F.R. Part 19.

2 Complainant has obtained the required joint determination from EPA Headquarters and DOJ.

3 4. This CAFO notifies the Salt River Project of Complainant's determination that the Salt
4 River Project has violated Sections 110 and 502 of the Act, 42 U.S.C. §§ 7410 and 7661, at its
5 Santan Generating Station ("SGS") located in Gilbert, Arizona. Gilbert is in Maricopa County
6 which, for purposes of the Act, is part of the Phoenix Planning Area.

7 **II. STATUTORY AND REGULATORY AUTHORITY**

8 5. The Administrator of the Environmental Protection Agency ("EPA"), pursuant to
9 authority under Section 109 of the Clean Air Act (the "Act"), 42 U.S.C. § 7409, promulgated
10 National Ambient Air Quality Standards ("NAAQS") for certain criteria pollutants, including
11 PM₁₀. 40 C.F.R. § 50.6.

12 6. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator
13 promulgated lists of attainment status designations for each air quality control region ("AQCR")
14 in every State. These lists identify the attainment status of each AQCR for each of the criteria
15 pollutants. The PM₁₀ attainment status designations for the Arizona AQCRs are listed at 40
16 C.F.R. § 81.303.

17 7. The Maricopa County Air Quality Department ("MCAQD")² has primary jurisdiction
18 over the Phoenix Planning Area, which has been designated as a serious nonattainment area for
19 the NAAQS for PM₁₀. 40 C.F.R. § 81.303.

20 8. Section 110(a)(2)(c) of the Act, 42 U.S.C. § 7410(a)(2)(c), requires that each state
21 implementation plan ("SIP") include a permit program to regulate the construction and
22 modification of any stationary source, and for nonattainment areas, must also include the
23 requirements of Part D of Title I of the Act. Part D of the Act, 42 U.S.C. §§ 7501-7515, and its
24

25
26 ² In November 2004, the Maricopa County Air Quality Department was created and
27 separated from the Maricopa County Environmental Services Department. This CAFO will refer
28 to these two agencies collectively as "MCAQD."

2 implementing regulations, 40 C.F.R. § 51.165, set out the requirements for SIPs for
3 nonattainment areas in order to ensure that those areas will attain the NAAQS on or before the
4 attainment date. For stationary sources not subject to Part D requirements, the SIP program
5 must meet the requirements of 40 C.F.R. §§ 51.160-164.

6 9. MCAQD Rule 21 (Procedures for Obtaining Installation Permits) is part of the federally-
7 approved and enforceable SIP pursuant to 42 U.S.C. § 7410 and Part D of the Act. See 53 Fed.
8 Reg. 30,224 (August 10, 1988).

9 10. MCAQD Rule 21.D. requires installation permits to be issued in compliance with and
10 contain requirements of Arizona Department of Environmental Quality ("ADEQ") Articles R9-
11 3-301 through R9-3-305 and R9-3-307. R9-3-302 requires installation permits for sources
12 located in a nonattainment area. MCAQD Rule 21.D. requires, in part, that a major source or
13 major alteration offset nonattainment pollutant emission increases on the startup date of the
14 major source or major alteration.

15 11. Title V of the Act, 42 U.S.C. §§ 7661 through 7661f, requires that all major sources of
16 air pollution obtain an operating permit ("Title V operating permit"). MCAQD Rule 200
17 requires an existing or modified major source to obtain a Title V operating permit that contains
18 all requirements applicable to that source. EPA granted MCAQD Title V program interim
19 approval on November 29, 1996 (61 Fed. Reg. 55910; October 30, 1996) and full approval on
20 November 30, 2001 (66 Fed. Reg. 63175; December 5, 2001).

21 12. MCAQD issues combined installation and Title V operating permits under SIP authority
22 and Title V authority, respectively.

23 **III. GENERAL ALLEGATIONS**

24 13. At all times relevant to this CAFO, the Salt River Project has been and is a political
25 subdivision of the State under the laws of Arizona, and a "person" within the definition set for
26 in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

2 14. At all times relevant to this CAFO, the Salt River Project has owned and operated SGS,
3 which is located in Gilbert, Arizona. At SGS, the Salt River Project generates electric power to
4 sell to its customers.

5 15. Prior to 2003, SGS consisted of four combined-cycle, natural gas-fired turbines and
6 related equipment capable of producing approximately 360 megawatts ("MW") of electrical
7 power. On February 10, 2003, MCAQD issued to the Salt River Project a combined installation
8 and Title V operating permit, V95-008, Significant Revision S01-014 ("Combined Permit") for
9 the modification of SGS. The modification included two new combined-cycle electrical
10 generating units and associated equipment (Units S-5A, S-5B and S-6A, Cooling Towers CT-5
11 and CT-6) capable of producing approximately 825 MW of additional power. This modification
12 is known as the Santan Expansion Project.

13 16. The Salt River Project's Combined Permit contains a condition requiring all road paving
14 particulate matter offsets provided by the Salt River Project for the Santan Expansion Project to
15 comply with a road paving offset generating rule that must be incorporated into the SIP for the
16 Phoenix Planning Area prior to commencement of operation of the Santan Expansion Project.
17 This permit condition, Condition 18.C.7., states:

18 This condition is applicable if the Permittee is relying on the use of PM₁₀ offsets
19 from road paving to meet the offset requirements of this permit. Prior to
20 commencement of operation of Units S-5A, S-5B and S-6A, Cooling Towers
21 CT-5 and CT-6 and 2 Emergency Diesel Engines (310 hp and 410 hp), all
22 particulate matter offsets required for this equipment shall be recalculated and be
23 approvable pursuant to a rule, which will have been by that time incorporated
24 into the state implementation plan for the Phoenix Planning Area, governing the
25 generation of such offsets from the paving of roads which were previously
26 unpaved. This rule is to be developed by the Maricopa County Environmental
27 Services Department and submitted to the U.S. Environmental Protection Agency
28 for inclusion into the state implementation plan for the Phoenix Planning Area.

24 17. MCAQD has promulgated an offset generating rule, Rule 242 "Emissions Offsets
25 Generated by the Voluntary Paving of Unpaved Roads," ("Rule 242") applicable to the Salt
26 River Project's Combined Permit. Rule 242 has been approved by EPA into the SIP. See 72

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2 F.R. 43537 (August 6, 2007).

3 **IV. SPECIFIC ALLEGATIONS**

4 18. Complainant incorporates by reference the allegations contained in Paragraphs 1 through
5 17 of this CAFO.

6 19. On or about January 31, 2005, the Salt River Project commenced operation of Unit S-5A
7 at SGS. Because Rule 242 had not yet been approved by EPA into the SIP, the Salt River
8 Project violated Sections 110 and 502 of the Act, 42 U.S.C. §§ 7410 and 7661, when it
9 commenced operation of Unit S-5A. That violation continued until EPA's approval of Rule 242
10 into the SIP.

11 20. On or about February 5, 2005, the Salt River Project commenced operation of Unit S-
12 5B at SGS. Because Rule 242 had not yet been approved by EPA into the SIP, the Salt River
13 Project violated Section 110 and 502 of the Act, 42 U.S.C. §§ 7410 and 7661, when it
14 commenced operation of Unit S-5B. That violation continued until EPA's approval of Rule 242
15 into the SIP.

16 21. On or about December 16, 2005, the Salt River Project commenced operation of Unit S-
17 6A at SGS. Because Rule 242 had not yet been approved by EPA into the SIP, the Salt River
18 Project violated Section 110 and 502 of the Act, 42 U.S.C. §§ 7410 and 7661, when it
19 commenced operation of Unit S-6A. That violation continued until EPA's approval of Rule 242
20 into the SIP.

21 **V. THE SALT RIVER PROJECT'S ADMISSIONS**

22 22. Without trial or litigation of the issues or any adjudication of the facts set forth in this
23 CAFO, the Salt River Project (i) admits that EPA has jurisdiction over the subject matter of this
24 CAFO and over the Salt River Project; (ii) admits the general allegations contained in Section
25 III of this CAFO; (iii) neither admits nor denies the specific allegations contained in Section IV
26 of this CAFO; (iv) consents to the terms of this CAFO, including the assessment of the civil
27

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2 administrative penalty under Section VI of this CAFO; (v) waives any right to contest the
3 allegations in this CAFO; and (vi) waives the right to appeal the proposed final order contained
4 in this CAFO.

5 **VI. PENALTY ASSESSMENT**

6 23. In settlement of the violations and facts specifically alleged in Section IV of this CAFO,
7 and in consideration of the statutory penalty factors set forth in Section 113(e)(1) of the CAA,
8 embodied in EPA's Clean Air Act Stationary Source Civil Penalty Policy ("Penalty Policy"),
9 dated October 25, 1991, and Appendix IX thereto, dated July 19, 1993, the Salt River Project
10 shall pay a civil administrative penalty of **twelve thousand five hundred dollars (\$12,500)**
11 within 30 calendar days after the effective date of this CAFO. Payment shall be made by
12 electronic fund transfer ("EFT") or cashier's or certified check payable to the "Treasury, United
13 States of America." Payment by EFT shall be transferred to the following address:

14 Mellon Bank
15 ABA 043000261
16 Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235

17 Payment by cashier's or certified check shall be sent by certified mail, return receipt requested,
18 to the following address:

19 U.S. Environmental Protection Agency
20 Region 9
P.O. Box 371099M
21 Pittsburgh, PA 15251

22 24. The check shall note the case title and docket number. Concurrent with the delivery of
23 payment, the Salt River Project shall send a copy of the check to the following addresses:

24 Mark Sims
25 Environmental Engineer
Enforcement Office, Air Division (AIR-5)
26 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
27 San Francisco, CA 94105

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2 Allan Zabel
3 Senior Counsel (ORC-2)
4 U.S. Environmental Protection Agency, Region IX
5 75 Hawthorne Street
6 San Francisco, CA 94105

7 Regional Hearing Clerk (ORC-1)
8 U.S. Environmental Protection Agency, Region IX
9 75 Hawthorne Street
10 San Francisco, CA 94105

11 25. Payment of the above civil administrative penalty shall not be used by the Salt River
12 Project or any other person as a tax deduction from the Salt River Project's federal, state, or
13 local taxes.

14 26. In the event that the full assessed penalty in this case is not transferred or postmarked on
15 or before its due date, the Salt River Project agrees to pay a stipulated penalty of thirty thousand
16 dollars (\$30,000) immediately in lieu of the civil administrative penalty, plus interest and costs
17 as allowed by law.

18 27. Additionally, the Salt River Project's failure to pay in full the civil administrative
19 penalty by its due date may lead to any or all of the following actions:

20 a. The debt being referred to a credit reporting agency, a collection agency, or the
21 Department of Justice for filing of a collection action in the appropriate United States
22 District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. In any such collection action, the
23 validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not
24 be subject to review.

25 b. The debt being collected by administrative offset (*i.e.*, the withholding of money
26 payable to the United States to, or held by the United States for, a person to satisfy the
27 debt the person owes the Government), which includes, but is not limited to, referral to
28 the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13,
Subparts C and H.

2 c. EPA may (i) suspend or revoke the Salt River Project's licenses or other privileges;
3 (ii) suspend or disqualify the Salt River Project from doing business with EPA or
4 engaging in programs EPA sponsors or funds; (iii) convert the method of payment under
5 a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke
6 a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.14 and 13.17.

7 28. In accordance with the Debt Collection Act of 1982, 31 U.S.C. § 3717, and 40 C.F.R.
8 Part 13, interest, penalties charges, and administrative costs will be assessed against the
9 outstanding amount that the Salt River Project owes to EPA for the Salt River Project's failure
10 to pay in full the civil penalty by its due date. Interest will be assessed at an annual rate that is
11 equal to the rate of current value of funds to the United States Treasury (*i.e.*, the Treasury tax
12 and loan account rate) as prescribed and published by the secretary of the Treasury in the
13 Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. §
14 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. §
15 13.11(c). Administrative costs for handling and collecting the Salt River Project's overdue debt
16 will be based on either actual or average cost incurred, and will include both direct and indirect
17 costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or
18 agency (*e.g.*, the Department of Justice, the Internal Revenue Service), that department or
19 agency may assess its own administrative costs, in addition to EPA's administrative costs, for
20 handling and collecting the Salt River Project's overdue debt.

21 **VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

22 29. The Salt River Project shall perform a Supplemental Environmental Project ("SEP").
23 The SEP shall be the paving of a previously unpaved road or road segment in the Phoenix
24 Planning Area. This road or road segment shall be approximately 0.2 miles in length and shall
25 have had a natural dirt surface rather than a gravel surface. The Salt River Project shall spend at
26 least thirty-seven thousand five hundred dollars (\$37,500) on the SEP. This amount shall only
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2 include the Salt River Project's cash outlay and shall not include the time or materials costs of
3 the Salt River Project personnel in implementing or overseeing the implementation of the SEP.

4 30. The Salt River Project shall complete the SEP no later than three hundred sixty-five
5 (365) days after the effective date of this CAFO. Within thirty (30) days after completing the
6 SEP, the Salt River Project shall submit to EPA a summary report that: identifies the road or
7 road segment paved; provides the date(s) paving was completed; includes a copy of the
8 appropriate local or state governments' report evaluating the condition of the road or road
9 segment; and includes appropriate local or state governments' commitment to add the road or
10 road segment to its government transportation network.

11 31. If the Salt River Project fails to complete the SEP in a satisfactory manner, the Salt River
12 Project agrees to pay to EPA a stipulated penalty in the amount of \$37,500, which shall become
13 due and payable upon EPA's written request. However, if the SEP is not completed in a
14 satisfactory manner but the Salt River Project made good faith and timely efforts to complete
15 the SEP and certify with supporting documentation that at least 90 percent of the minimum
16 amount required to be spent on the SEP was expended on the SEP, no stipulated penalty is
17 required. The determination of whether the project has been completed in a satisfactory manner
18 and whether the Salt River Project has made good faith, timely efforts to complete the project
19 shall be within the sole discretion of EPA.

20 **VIII. RETENTION OF RIGHTS**

21 32. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves the Salt River
22 Project's liability for federal civil penalties for the violations specifically alleged in this CAFO.
23 Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for
24 violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance,
25 or permit not specifically alleged in Section IV of this CAFO; or (ii) any criminal liability. In
26 addition to any other authority, right, or remedy available to EPA, EPA specifically reserves any
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2 and all authorities, rights, and remedies available to it (including, but not limited to, injunctive
3 or other equitable relief or criminal sanctions) to address any violation of this CAFO or any
4 violation not specifically alleged in this CAFO.

5 33. This CAFO does not exempt, relieve, modify, or affect in any way the Salt River
6 Project's duty to comply with all applicable federal, state, and local laws, regulations, rules,
7 ordinance, and permits.

8 **IX. ATTORNEYS' FEES AND COSTS**

9 34. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this
10 proceeding, except as provided for elsewhere in this Consent Agreement.

11 **X. EFFECTIVE DATE**

12 35. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective
13 on the date that the Final Order contained in this CAFO, having been approved and issued by
14 either the Regional Judicial Officer or Regional Administrator, is filed.

15 **XI. BINDING EFFECT**

16 36. The undersigned representative of Complainant and the undersigned representative of
17 the Salt River Project each certifies that he or she is fully authorized to enter into the terms and
18 conditions of this CAFO and to bind the party he or she represents to this CAFO.

19 37. The provisions of this CAFO shall apply to and be binding upon the Complainant and
20 the Salt River Project and its officers, directors, employees, agents, trustees, servants, authorized
21 representatives, successors, and assigns.

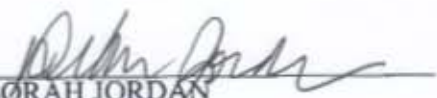
22 **XII. MISCELLANEOUS**

23 38. This CAFO constitutes a "prior violation," as that term is used in the Penalty Policy.
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1 In the Matter of: Salt River Project

2 FOR THE UNITED STATES ENVIRONMENTAL
3 PROTECTION AGENCY, REGION IX:

4 Date: 9/27/2007

5 
6 DEBORAH JORDAN
7 Director, Air Division
8 U.S. Environmental Protection Agency, Region IX
9 75 Hawthorne Street
10 San Francisco, California 94105

11 FOR THE SALT RIVER PROJECT AGRICULTURAL
12 IMPROVEMENT AND POWER DISTRICT:

13 Date: 9/26/2007

14 
15 RICHARD M. HAYSLIP
16 Associate General Manager
17 Salt River Project Agricultural Improvement
18 and Power District
19 Mail Station PAB229
20 P.O. Box 52025
21 Phoenix, Arizona 85072-2025


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2 **FINAL ORDER**

3 EPA Region 9 and the Salt River Project, having entered into the foregoing Consent
4 Agreement,

5 IT IS HEREBY ORDERED that this Consent Agreement and Final Order Pursuant to 40
6 C.F.R. §§ 22.13 and 22.18 (Docket No. CAA-09-2007-0034 be entered, and the Salt River
7 Project shall pay a civil administrative penalty in the amount of twelve thousand five hundred
8 dollars (\$12,500) in accordance with the terms set forth in the Consent Agreement. In addition,
9 the Salt River Project shall perform the supplemental environmental project as set forth in the
10 Consent Agreement.

11 Date: 09/27/2007


12 Steven L. Jawgiel
13 Regional Judicial Officer (ORC-2)
14 United States Environmental
15 Protection Agency, Region IX
16 75 Hawthorne Street
17 San Francisco, California 94105
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3 **CERTIFICATE OF SERVICE**

4 I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40
5 C.F.R. §§ 22.13 and 22.18, Docket No. CAA-09-2007-0034 was hand delivered to the
6 Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75
7 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was
8 placed in the United States Mail, certified mail, return receipt requested, addressed to the
9 following address:

10 Terrill A. Lonon
11 Corporate Secretary
12 Salt River Project Agricultural Improvement and Power District
Mail Station PAB215
P.O. Box 52025
Phoenix, Arizona 85072-2025

13 Certified Return Receipt No. 7003 3110 0006 1997 2661
14

15
16 Date: 09/28/2007

17 By: Danielle E. Carr
18 DANIELLE CARR
19 Regional Hearing Clerk (ORC-1)
20 United States Environmental
21 Protection Agency, Region IX
22 75 Hawthorne Street
23 San Francisco, California 94105
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