

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

REGIONAL HEARING
CLERK

2014 SEP -4 AM 6:50

U.S. Environmental
Protection Agency-Reg 2

In the Matter of:

Township of Brick, New Jersey

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-02-2014-1221

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 U.S. Environmental Protection Agency ("EPA") Region 2, against the Township of Brick, New Jersey ("Brick" or Respondent), pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and Rules 22.13(b) and 22.18(b) of EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (the Consolidated Rules), 40 C.F.R. Part 22. The proceeding was commenced by the filing of a Complaint and Notice of Opportunity to Request a Hearing (Complaint) on July 30, 2014.

The Consent Agreement portion of this CAFO is signed by the Complainant and duly authorized representatives of Respondent. The Final Order portion of the CAFO is issued by the Region 2 Regional Judicial Officer.

CONSENT AGREEMENT

General Provisions

1. The Complainant and Brick 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, dated July 30, 2014.
2. Consistent with the Consolidated Rules 22.13(b) and 22.18(b), this Consent Agreement and the attached Final Order only resolve Brick's liability for Federal Civil Penalties for the violations and facts alleged in the Complaint.
3. Solely for the purposes of EPA's administrative penalty proceeding, and consistent with Consolidated Rule 22.18(b), Brick:
 - a. admits the jurisdictional allegations set forth in Paragraphs 1-4 of the Complaint, attached hereto as Exhibit A;
 - b. neither admits nor denies the factual allegations found in Paragraphs 17-28 of the Complaint;
 - c. neither admits nor denies the legal conclusions found in Paragraphs 29-32 of the Complaint;
 - d. 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;
 - e. consents to the issuance of the attached Final Order; and
 - f. 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, Brick shall pay a civil penalty of **\$7,000**. Brick shall pay the **\$7,000**, either by corporate, cashiers' or certified check within thirty (30) days from the date of issuance of the attached Final Order. Brick shall: (1) clearly type or write

the docket number (CAA-02-2014-1221) 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

Brick shall send notices of each payment to the following:

Robert Buettner, 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

Liliana Villatora, Air Branch Chief
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007

5. If Brick fails to make full and complete payment of the civil penalty that is required by this CAFO, EPA may pursue an action to compel payment, plus interest, handling charges, attorney fees, collection costs and a nonpayment penalty. 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: (i) interest shall accrue from the Due Date and shall be assessed at rates established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621; (ii) handling charges shall be those contemplated by 31 U.S.C. § 3717(e)(1); and (iii) the nonpayment penalty will be ten percent of the total amount of any penalties, interest, enforcement expenses and nonpayment penalties which are unpaid as of the beginning of each calendar quarter, and will be charged for each calendar quarter during which the failure to pay persists.

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

7. Nothing in this Consent Agreement and attached Final Order shall relieve Brick 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 Respondent 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. Brick explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives its right to appeal the attached Final Order.

11. Brick waives any right it 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 Judicial Officer 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.

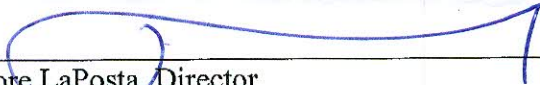
12. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in this action resolved by this Consent Agreement and attached Final Order.

13. The Consent Agreement and attached Final Order shall be binding on Brick and its successors and assignees.

14. 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:



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2

SEPTEMBER 2, 2015

For Respondent Township of Brick, New Jersey:



Joanne Bergin
Business Administrator
401 Chambersbridge Road
Brick, New Jersey 08723

8/27, 2015

In the Township of Brick, New Jersey
CAA-02-2014-1221

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of the Township of Brick, New Jersey, EPA Index Number CAA-02-2014-1221. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective upon filing with the Regional Hearing Clerk.

DATE: Sept 3, 2015



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

Certificate of Service

I certify that on September 4, 2015, I caused the foregoing Partial Consent Agreement and Final Order in the matter of *Brick Township*, CAA-02-2014-1221, 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, 16th Floor
New York, NY 10007-1866

One Copy, by hand delivery to:

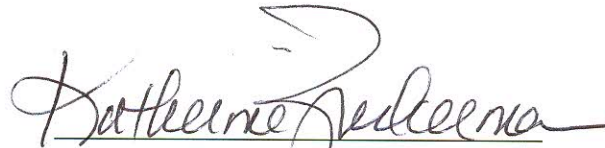
John Dolinar
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

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

One Copy, by Overnight Delivery to:

Kevin Starkey. Esq.
Starkey, Kelly, Kenneally, Cunningham & Turnbach.
1593 Route 88 West
Brick, NJ 08724

Dated: September 4, 2015


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