

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

2017 OCT 18 PM 2:20

11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

Pavers LLC  
12303 Highway 6  
Waverly, Nebraska 68462

Respondent.

**CONSENT AGREEMENT AND  
FINAL ORDER**

Docket No. CAA-07-2017-0461

**I. PRELIMINARY STATEMENT**

1. The United States Environmental Protection Agency, Region 7 (EPA or Complainant) and Pavers LLC (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

2. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

3. This Consent Agreement and Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement and Final Order.

**II. JURISDICTION**

4. This administrative action for the assessment of civil penalties is instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and in accordance with the Consolidated Rules of Practice.

5. The EPA Administrator and the United States Attorney General, through their delegated representatives, have jointly determined that this administrative penalty action is appropriate for a

larger penalty amount or longer period of violation than the time and penalty limitations set forth in Section 113(d) of the CAA.

### **III. PARTIES**

6. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator of the EPA, Region 7, is the Director of the Air and Waste Management Division, EPA Region 7.

7. The Respondent is Pavers LLC, a company registered and authorized to do business in the State of Nebraska. The Respondent owns and operates a hot mix asphalt facility at 12303 Highway 6, Waverly, Nebraska 68462.

### **IV. STATUTORY AND REGULATORY BACKGROUND**

8. The Clean Air Act establishes a regulatory framework designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401.

9. Section 110 of the Clean Air Act, 42 U.S.C. § 7410, grants the Administrator of EPA authority to approve a state plan which provides for implementation, maintenance, and enforcement of an air quality standard in each air quality control region within the state.

10. On May 31, 1972, EPA approved the initial Nebraska State Implementation Plan (SIP), which included the City of Lincoln's regulations that had been adopted and were effective at that time. 37 Fed. Reg. 10842. On May 26, 1982, EPA approved the Nebraska SIP to include the Lancaster County regulations. 47 Fed. Reg. 22954. On October 18, 1995, EPA approved the Nebraska SIP to include the Lincoln-Lancaster County Air Pollution Control Program regulations, which replaced the City of Lincoln's regulations and the Lancaster County regulations in their entirety. 61 Fed. Reg. 5699.

11. The regulations appearing at Article 2, Section 17 – "*Construction Permits – When Required,*" and Article 2, Section 20, "*Particulate Emissions- Limitations and Standards*" of the Lincoln-Lancaster County Air Pollution Control Program Regulations and Standards (LLCAPCPRS) were incorporated into and part of the Nebraska SIP at the time of the violation alleged in this Consent Agreement. All citations herein refer to the provisions of the Nebraska SIP as applicable at the time of the violation alleged herein.

12. The regulations appearing at Article 2, Section 20, paragraph (E) of the LLCAPCPRS state that "(n)o person shall cause or allow emissions, from any existing source, which are of an opacity equal to or greater than twenty percent (20%) as evaluated by Method 9 in Appendix A of 40 C.F.R. Part 60..."

13. The regulations appearing at Article 1, Section 2, paragraph (C) of the LLCAPCPRS state that it shall be unlawful to "violate any emission limit or standard established in the Air Pollution Control Program."

14. Pursuant to Section 113 of the Act, 42 U.S.C. § 7413, the requirements of the Nebraska SIP, as approved by EPA, are enforceable by EPA. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), states that once the Administrator finds that any person is in violation of any requirement of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding.

15. Pursuant to Section 113(a)(1) of the Act, on or about March 22, 2016, EPA issued a notice of violation to Pavers LLC and notified the State of Nebraska and the Lincoln-Lancaster County Health Department.

16. Section 113(a)(1) of the Act further provides that at any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, among other things, issue an administrative penalty order in accordance with Section 113(d)(1) of the Act.

17. Pursuant to Section 113(d)(1) of the Act, the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 110 of the Act. Section 113(d)(1) of the Act, as amended by the Federal Civil Penalties Inflation Adjustment Act of 2015 and implemented by the Civil Monetary Penalty Inflation Adjustment Rule (82 Fed. Reg. 3633), authorizes the United States to assess civil administrative penalties of up to \$37,500 per day for each violation that occurs between January 12, 2009, and November 1, 2015, and \$44,539 per day for each violation that occurs after November 2, 2015 and assessed on or after August 1, 2016.

## **V. FACTUAL BACKGROUND**

18. Pavers LLC is the owner or operator of a hot mix asphalt plant in Waverly, Nebraska (hereinafter “Respondent's Facility” or “Facility”).

19. As part of its hot mix asphalt plant, Pavers operated a parallel-flow dryer/mixer drum. Emissions from the dryer/mixer drum were discharged to a baghouse.

20. The parallel-flow dryer/mixer drum was subject to the requirements of Construction Permit #095, issued by the Lincoln-Lancaster Health Department.

21. On or about November 24, 2003, July 30, 2009, June 16, 2011, and September 22, 2014, the Lincoln-Lancaster Health Department initiated enforcement actions against Pavers LLC for separate violations of Article 2, Section 20, paragraph (E) of the LLCAPCPRS.

## **VI. ALLEGED VIOLATIONS OF LAW**

22. On October 14, 2015, the Lincoln-Lancaster Health Department evaluated the stack of the parallel-flow dryer/mixer drum baghouse at Respondent's Facility by conducting a Method 9

observation from 9:40 AM to 9:47 AM. The average opacity recorded during the Method 9 observation was 36.04%.

23. Pavers LLC caused or allowed emissions of opacity equal to or greater than twenty percent (20%) as evaluated by Method 9 in Appendix A of 40 C.F.R. Part 60, and is therefore in violation of Article 2, Section 20, paragraph (E) of the LLCAPCPRS of the federally approved Nebraska SIP, Section 110 of the Act, 42 U.S.C. § 7410, and the Act's implementing regulations.

## **VII. CONSENT AGREEMENT**

24. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. Admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement and Final Order;
- b. Neither admits nor denies the alleged violations of law stated above;
- c. Consents to the assessment of a civil penalty as stated below;
- d. Consents to the issuance of any specified compliance or corrective action order;
- e. Consents to the conditions specified in this Consent Agreement and Final Order;
- f. Consents to any stated Permit Action;
- g. Waives any right to contest the alleged violations of law set forth in Section VI of this Consent Agreement and Final Order; and
- h. Waives its rights to appeal the Final Order portion of this Consent Agreement.

25. For the purpose of this proceeding, Respondent:

- a. Agrees that this Consent Agreement and Final Order states a claim upon which relief may be granted against Respondent;
- b. Acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. Waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Agreement and Final Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- d. Consents to personal jurisdiction in any action to enforce this Consent Agreement

and Final Order in the United States District Court; and

- e. Waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement and Final Order, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

26. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees incurred as a result of this action.

27. Respondent certifies by signing this Agreement that, to the best of its knowledge, Respondent's facility is in compliance with all requirements of Article 2, Section 20, paragraph (E) of the LLCAPCPRS of the federally approved Nebraska SIP, Section 110 of the Act, 42 U.S.C. § 7410, and the Act's implementing regulations.

#### **A. Penalty Payment**

28. Respondent agrees that, in settlement of the claims alleged in this Agreement, Respondent shall pay a civil penalty of \$11,250 within thirty (30) days of the effective date of this Final Order. Payment shall be made by cashiers or certified check or on-line. Payment must identify the docket number for this matter, be made payable to the "United States Treasury," and shall be remitted to:

U.S. Environmental Protection Agency, Region 7  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

Wire transfers should be directed to the Federal Reserve Bank of New York:  
Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

On-line payments shall be made at:

www.pay.gov  
Enter "SFO 1.1" in the search field  
Open form and complete fields

29. A copy of the check shall be sent to:

Regional Hearing Clerk  
United States Environmental Protection Agency – Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and to:

Jonathan Meyer  
Assistant Regional Counsel  
United States Environmental Protection Agency – Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

30. Late Payment Provisions. 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. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of the debt collection, including processing and handling costs and attorneys' fees. In addition, a non-payment penalty charge of six (6) percent per year, compounded annually, will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

31. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

#### **B. Effect of Consent Agreement and Final Order**

32. Payment of the civil penalty in full shall resolve all civil and administrative claims for all violations of the CAA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law and/or regulation administered by the EPA.

33. The effect of settlement described in Paragraph 32 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 27 of this Agreement.

34. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

35. Nothing in this Agreement shall be construed as a release from any other action under law and/or regulation administered by EPA. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

36. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

37. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

38. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Agreement and to legally bind Respondent to it.

39. This Agreement shall apply to and be binding upon Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Agreement.

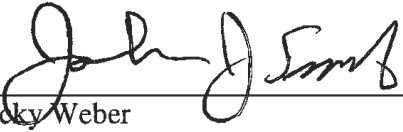
40. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.


41. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

42. The effective date of the Final Order shall be the date on which it is filed by the Regional Hearing Clerk.

**COMPLAINANT:**

U.S. Environmental Protection Agency

Date: 10/18/17 By:   
Becky Weber  
Director  
Air and Waste Management Division

Date: 10/17/17 By:   
Jonathan Meyer  
Assistant Regional Counsel  
Office of Regional Counsel

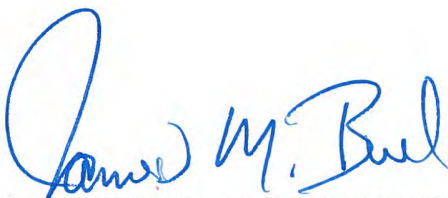


**RESPONDENT:**

Pavers LLC

Date: 10-05-2017

By:



James M Buel

Printed Name

President

Title

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
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Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.

Date:

October 18, 2017

Karina Borromeo

Karina Borromeo  
Regional Judicial Officer

**CERTIFICATE OF  
SERVICE**

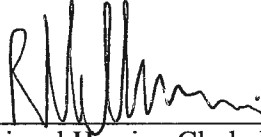
I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

Jonathan Meyer  
meyer.jonathan@epa.gov

Copy by email to Attorney for Respondent:

Jim Luers  
JLuers@wolfesnowden.com

Date: October 18<sup>th</sup>, 2017   
Regional Hearing Clerk, Region 7