EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for <u>John Hultgren</u> Name of Case Attorney	5/25/16 Date
in the <u>ORC (RAA)</u> at <u>918-1113</u> Office & Mail Code Phone number	
Case Docket Number CAA-01-2016-0037	
Site-specific Superfund (SF) Acct. Number	
This is an original debt This is a modification	
Name and address of Person and/or Company/Municipality making the payment:	
Cherenzia Excavation Inc.	
64 Old Hopkinton Road and	
109 White Rock Road	
Westerly, Rhade Island	
Total Dollar Amount of Receivable \$ 84 070 Due Date: 6 25 16	
SEP due? Yes No Date Due	
Installment Method (if applicable)	
INSTALLMENTS OF:	
1 ST \$ on	
2 nd S on	
3 rd \$ on	
4 th \$ on	
5 th \$ on	
For RHC Tracking Purposes:	
Copy of Check Received by RHC Notice Sent to Finance	
TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:	
IFMS Accounts Receivable Control Number	
If you have any questions call: in the Financial Management Office Phone Number	



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION I – New England 5 Post Office Square - Suite 100 Boston, Massachusetts 02109-3912

BY HAND

RECEIVED

May 25, 2016

MAY 2 5 2016 EPA ORC W Office of Regional Hearing Clerk

Wanda Santiago Regional Hearing Clerk U.S. Environmental Protection Agency - Region I 5 Post Office Square - Suite 100 (ORA18-1) Boston, MA 02109-3912

Re: In the Matter of Cherenzia Excavation, Inc., Docket No. CAA 01-2016-0037

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a Consent Agreement and Final Order ("CAFO") resolving the above-referenced enforcement case. Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the CAFO and this cover letter were mailed to the Respondent's House Counsel, Thomas Liguori.

Thank you for your assistance in this matter.

Sincerely,

John E. Hultgren Enforcement Counsel

Enclosures

ecc: Thomas Liguori, Esq., Cherenzia Excavation, Inc. Thomas McCusker, EPA Office of Environmental Stewardship

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

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In the Matter of:

Cherenzia Excavation, Inc. 64 Old Hopkinton Road and 109 White Rock Road Westerly, Rhode Island

Respondent

Docket No. CAA 01-2016-0037

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following person on the date noted below:

One Copy by First Class Mail and Electronic Mail to:

Thomas Liguori, Esq. House Counsel Cherenzia Excavation, Inc. P.O. Box 513 Westerly, RI 02891 tomliguori@cherenzia.com

Dated: May 25, 2016

Signed:

John E. Hultgren Enforcement Counsel Office of Environmental Stewardship U.S. Environmental Protection Agency, Region 1 Suite 100, Mail Code OES4-02 5 Post Office Square, Boston, MA 02109-3912

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

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Dated: May 25, 2016

Signed:

John E. Hultgren Enforcement Counsel Office of Environmental Stewardship U.S. Environmental Protection Agency, Region 1 Suite 100, Mail Code OES4-02 5 Post Office Square, Boston, MA 02109-3912

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

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In the Matter of:

Cherenzia Excavation, Inc. 64 Old Hopkinton Road and 109 White Rock Road Westerly, Rhode Island

Respondent

Docket No. CAA 01-2016-0037

CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region I ("EPA"), alleges that Cherenzia Excavation, Inc., located at 64 Old Hopkinton Road and 109 White Rock Road, Westerly, Rhode Island 02891 ("Respondent") violated certain provisions of (1) the New Source Performance Standards for Nonmetallic Mineral Processing Plants found at 40 C.F.R. Part 60, Subpart OOO ("Nonmetallic Mineral Processing NSPS"); and (2) the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, found at 40 C.F.R. Part 63, Subpart ZZZZ ("RICE NESHAP").

EPA and Respondent agree to settlement of this matter through this Consent Agreement and Final Order ("CAFO") without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b).

EPA and Respondent agree that settlement of this matter is in the public interest, and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

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Page 1 of 1

EPA ORC WS Office of Regional Hearing Clerk Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

A. <u>PRELIMINARY STATEMENT</u>

1. The provisions of this CAFO shall apply to and be binding upon EPA and upon Respondent and its officers, directors, trustees, successors, and assigns. The "Effective Date" of this CAFO shall be defined as the date that this CAFO is filed with the Regional Hearing Clerk, as described in the Final Order attached to this Consent Agreement.

2. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondent waives any defenses it might have as to jurisdiction and venue. Respondent consents to the terms of this CAFO.

3. Respondent neither admits nor denies the general or specific factual and legal allegations contained below in Section B. For purposes of this CAFO and any action necessary to enforce it, Respondent hereby waives its right to request a judicial or administrative hearing or otherwise to contest the allegations in this CAFO. Respondent waives any right to appeal this CAFO.

4. By signing this CAFO, Respondent certifies that it is presently operating in compliance with the Nonmetallic Mineral Processing NSPS and RICE NESHAP and that is has fully addressed the violations alleged herein.

Statutory and Regulatory Authorities

5. EPA promulgated the Nonmetallic Mineral Processing NSPS and RICE NESHAP pursuant to Sections 111 and 112 of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7411 and 7412. Regulations promulgated under CAA Section 111 and 112 are enforceable by EPA in accordance with Section 113 of the Act, 42 U.S.C. § 7413.

6. Respondent's alleged violations described herein render Respondent liable
for penalties under Section 113(d) of the Act. Section 113(d) of the Act, 42 U.S.C.
§ 7413(d), authorizes EPA to issue an administrative penalty order.

7. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Civil Monetary Inflation Rule (see Pub. L. 104-134 and 40 C.F.R. Part 19), EPA may assess penalties of up to \$37,500 for each day of each violation of the Act occurring after December 6, 2013.

8. Section 113(d) of the Act limits EPA's authority to issue administrative complaints to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than twelve months prior to the initiation of the action, unless the EPA Administrator and the Attorney General for the U.S. Department of Justice ("DOJ") jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative action. Pursuant to the Debt Collection Improvement Act and its implementing regulations, the above-described penalty cap has been raised to \$320,000.

9. Although the violations alleged in Section B below occurred or commenced more than twelve months ago, EPA and DOJ have jointly determined that this matter is appropriate for administrative action.

B. <u>EPA FINDINGS</u>

General Findings

10. In 1989, Respondent began its stone crushing and gravel processing operations at 64 Old Hopkinton Road in Westerly, Rhode Island ("Old Hopkinton Road Facility"). The Old Hopkinton Road Facility is a portable nonmetallic mineral processing plant, as defined in 40 C.F.R. § 60.671, with a capacity of 342 to 375 tons per hour.

11. In 1998, Respondent began its stone crushing and gravel processing operations at 109 White Rock Road in Westerly, Rhode Island ("White Rock Road Facility"). The White Rock Road Facility is a portable nonmetallic mineral processing plant, as defined in 40 C.F.R. § 60.671, with a capacity of 250 to 385 tons per hour.

12. On September 25, 2012, RI DEM conducted inspections at both of Respondent's facilities. In addition, on October 16, 2012, RI DEM issued information requests to both of Respondent's facilities.

On or about January 17, 2013, Respondent submitted its responses to RI
 DEM.

14. On September 25, 2014, EPA conducted on-site inspections of both of Respondent's facilities.

15. On May 22, 2015, EPA issued an Administrative Order to Respondent under the authority of Section 113 of the Act, 42 U.S.C. § 7413. RI DEM was provided a copy of such Administrative Order. In the Matter of Cherenzia Excavation, Inc.: Docket No. CAA 01-2016-0037

16. On June 17, 2015, EPA and Respondent met and agreed upon a compliance schedule. Respondent took steps to meet the compliance schedule and come into compliance with the Nonmetallic Mineral Processing NSPS and RICE NESHAP.

Specific Findings

Alleged Violations of Nonmetallic Mineral Processing NSPS

- 17. At its Old Hopkinton Road Facility, Respondent:
 - a. operates one Lippmann primary jaw crusher; two Cedar Rapids
 secondary cone crushers; two El-Jay secondary cone crushers; and a
 number of associated screeners and conveyors;
 - b. operates one stationary Caterpillar, Model 3412, diesel
 engines/generator ("Engine OH1"); and one stationary, Caterpillar,
 Model 3508, diesel engine/generator ("Engine OH2"); and
 - c. operated one stationary Caterpillar, Model 3412, Diesel engine/generator ("Engine OH3") until Engine OH3 was replaced on December 10, 2015.

18. At its White Rock Road Facility, Respondent operates:

- a. one Metso, Model C-125, primary jaw crusher; one Cedar Rapids secondary cone crusher; and a number of associated screeners and conveyors; and
- b. one stationary Caterpillar, Model 3412, diesel engine/generator ("Engine WR1").

19. The Nonmetallic Mineral Processing NSPS applies to portable nonmetallic mineral processing plants with a capacity of more than 150 tons per hour. See 40 C.F.R.

§ 60.670(c). The provisions of the Nonmetallic Mineral Processing NSPS apply to the following "affected facilities" in a portable nonmetallic mineral processing plant: each crusher; grinding mill; screening operation; bucket elevator; belt conveyor; bagging operation; storage bin; and enclosed truck or railcar loading station. See 40 C.F.R. § 60.670(a).

20. Respondent's various crushers, screeners, and belt conveyors are "affected facilities" under the Nonmetallic Mineral Processing NSPS.

21. The effective date of the Nonmetallic Mineral Processing NSPS was August 1, 1985. See 50 Fed. Reg. 31328 (August 1, 1985). Amendments to the Nonmetallic Mineral Processing NSPS were effective on April 28, 2009. See 74 Fed. Reg. 19309 (April 28, 2009). Each owner or operator of an affected facility that commenced construction, reconstruction, or modification after August 31, 1983 is subject to the requirements of the Nonmetallic Mineral Processing NSPS as promulgated on August 1, 1985. See 40 C.F.R. § 60.670(e).

22. Pursuant to 40 C.F.R. § 60.672(b), Standard for Particulate Matter, affected facilities without capture systems, such as Respondent's two facilities, must meet the fugitive emission limits and compliance requirements in Table 3 of this subpart within 60 days after achieving the maximum production rate at which the facility will be operated, but no later than 180 days after initial startup as required under 40 C.F.R. §60.11.

23. Pursuant to 40 C.F.R. § 60.675(c), Test Methods and Procedures, the owner or operator of an affected facility must determine compliance with § 60.672(b) by

performing EPA Reference Method 9 visible emission testing on all subject equipment (e.g., the crushers, screeners, and conveyor belts).

24. Respondent initially started up its nonmetallic mineral processing operations at its Old Hopkinton Road Facility and its White Rock Road Facility in 1989 and 1998, respectively. Therefore, Respondent was required, at the very latest, to conduct EPA Reference Method 9 visible emission testing, to determine its fugitive emissions from the subject equipment (e.g., the crushers, screeners, and conveyor belts), by some date in 1989 or 1990 for its Old Hopkinton Road Facility and by some date in 1998 or 1999 for its White Rock Road Facility.

25. At the time of the issuance of the Administrative Order, Respondent had only conducted EPA Reference Method 9 visible emission testing on the Cedar Rapids secondary cone crusher, Model 1323, and the Cedar Rapids 42" x 50" feed conveyor belt.

26. Respondent did not complete EPA Reference Method 9 visible emission testing on all other subject equipment until June 22, 2015.

27. Accordingly, Respondent has violated 40 C.F.R. §§ 60.672(b) and 60.675(c).

28. Pursuant to 40 C.F.R. § 60.676(i), the owner or operator of an affected facility shall submit to EPA a notification of the actual date of initial startup of each affected facility (e.g., each crusher, screener, and conveyor belt).

29. Respondent did not provide a notification of the actual date of initial startup of its stone crushing and gravel processing equipment until January 17, 2013 (the date it provided the information to RI DEM).

30. Accordingly, Respondent has violated 40 C.F.R. § 60.676(i).

Alleged Violations of RICE NESHAP

31. Engine OH1, located in the quarry area of the Old Hopkinton Road Facility, Serial Number BLG03035, has a brakehorse power rating of 1186, an installation date of May 30, 2006, and a displacement value of 27 liters per cylinder.

32. Engine OH2, located in the crushing area of the Old Hopkinton Road Facility, has a brakehorse power rating of 997, and an installation date of March 17, 1998 and a displacement value of 34.5 liters per cylinder.

33. Engine OH3, located in the quarry area of the Old Hopkinton Road Facility, Serial Number 81Z19876, had a brakehorse power rating of 749, an installation date of February 2, 2000, and a displacement value of 27.0 liters per cylinder. On December 10, 2015, Engine OH3 was replaced.

34. Engine WR1, located at the White Rock Road Facility, has a brakehorse power rating of 609, build date of September 14, 1998, and a displacement value of 2.25 liters per cylinder.

The RICE NESHAP applies to Engine OH1, Engine OH2 and Engine
 WR1.

36. The RICE NESHAP applied to Engine OH3 until it was replaced on December 10, 2015.

37. Respondent is considered an "area source" for hazardous air pollutant (HAP) emissions because the facility does not have the potential to emit 10 tons, or more, of a single HAP and does not have the potential to emit 25 tons, or more, of a combination of HAPs. 40 C.F.R. §§ 63.6585(c) and (b).

38. All four of the diesel engines/generators described above commenced construction prior to June 12, 2006 and each is/was classified as a stationary reciprocating internal combustion engine. EPA is not aware of any reconstruction of any of these four units. As such, Engines OH1, OH2 and WR1 are each classified as an "existing" RICE unit, and Engine OH3 was classified as an "existing" RICE unit until it was replaced on December 10, 2015. (See 40 C.F.R. § 63.6590(a)(iii)).

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39. None of the four engines/generators described above is/was classifiable as an emergency stationary RICE or a limited use stationary RICE, as defined in the RICE NESHAP at 40 C.F.R. § 63.6675.

40. Pursuant to 40 C.F.R § 63.6645(a)(2), the owner or operator of an existing stationary RICE located at an area source of HAP emissions, subject to the RICE NESHAP, must submit an initial notification, as described in § 63.6645 and § 63.9(b). This notification was due by August 31, 2013.

41. Respondent did not submit an initial notification to EPA for either facility until October 5, 2015.

42. Accordingly, Respondent has violated 40 C.F.R. § 63.6645 and § 63.9(b).

43. Pursuant to 40 C.F.R § 63.6612(a), an owner or operator of an existing stationary RICE located at an area source of HAP emissions must conduct any initial performance test or other initial compliance demonstration that apply according to Table 4 and Table 5 of the RICE NESHAP within 180 days after the compliance date specified in 40 C.F.R. § 63.6595 and according to the provisions in 40 C.F.R. § 63.7(a)(2). Each of the four diesel engines/generators located at Respondent's facilities had a compliance date of May 3, 2013. Therefore, the due date for the initial performance test and/or initial compliance demonstration for each of the four engines/generators was October 30, 2013.

44. Respondent performed an incomplete initial performance test (30% of maximum capacity) on Engine OH1 in April 2015. Respondent performed complete initial performance tests (30% of maximum capacity, and within +/-10% of maximum capacity) on Engines OH1, OH2 and WR1 by December 1, 2015. Respondent did not conduct an initial compliance test and/or compliance demonstration on Engine OH3. However, as agreed to by EPA, rather than completing an initial performance test on December 1, 2015 on Engine OH3, Respondent replaced Engine OH3 on December 10, 2015 with a Caterpillar, Model C15-EPG, engine/generator built in 2008 and certified by its manufacturer to meet EPA's Tier III emission requirements under 40 C.F.R. Part 89.

45. Accordingly, Respondent has violated 40 C.F.R § 63.6612(a) and § 63.7(a)(2).

46. Pursuant to 40 C.F.R. § 63.6645 and § 63.9(h)(2)(ii), the owner or operator of an affected source that complies by conducting initial performance tests must submit to the Administrator a notification of compliance status, including performance test results, before the close of business on the 60^{th} day following the completion of the performance test according to 40 C.F.R. § 63.10(d)(2). Whereas, the owner or operator of an affected source that complies by conducting initial compliance demonstrations must submit to the Administrator a notification of compliance status before the close of business on the 30^{th} day following the completion of the initial compliance demonstration. Based on the October 30, 2013 due date specified above for the initial performance test or initial compliance demonstration, the due dates for submitting notifications of compliance status to EPA were November 29, 2013 and December 29, 2013, respectively.

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47. Respondent did not submit its notifications of compliance status to EPA regarding the diesel engines/generators until December 22, 2015.

48. Accordingly, Respondent has violated 40 C.F.R. § 63.6645 and §63.9(h)(2)(ii).

49. Pursuant to 40 C.F.R. § 63.6650, the owner or operator of a stationary, non-emergency, non-black start, compression ignition RICE greater than 300 horsepower located at an area source of HAP emissions must submit semiannual compliance reports to EPA. The due date for Respondent's first semiannual compliance reports, for the period beginning on the compliance date for the RICE NESHAP, May 3, 2013, through December 31, 2013, was January 31, 2014.

50. Respondent did not submit semiannual compliance reports to EPA for the facilities until January 6, 2016.

51. Accordingly, Respondent has violated 40 C.F.R. § 63.6650.

C. <u>TERMS OF SETTLEMENT</u>

52. Without admitting or denying the specific factual allegations contained in this CAFO, Respondent consents to the terms and issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty as set forth in this CAFO.

53. <u>Civil Penalty</u>: Taking into account the particular facts and circumstances of this matter with specific reference to the statutory factors of Section 113(e) of the Act,

and other factors, including Respondent's cooperative efforts in achieving regulatory compliance in conformance with the compliance schedule agreed to by the parties after the Administrative Order was issued, EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in this CAFO in the total amount of eighty-four thousand and seventy dollars (\$84,070). Respondent shall pay the penalty of eighty-four thousand and seventy dollars (\$84,070) within thirty (30) days of the Effective Date of this CAFO.

54. Respondent shall make the penalty payment by submitting a bank, cashier's, or certified check, to the order of the "Treasurer, United States of America," in the amounts described in the preceding paragraph to:

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

Respondent may submit penalty payments by via express mail to the following address:

U.S. Bank 1005 Convention Plaza Mail Station SL-MO-C2GL St. Louis, MO 63101 Contact: Natalie Pearson Telephone: (314) 418-4087

Respondent shall note the case name and docket number of this action (CAA-01-

2016-0037) on the check and in an accompanying cover letter, and shall simultaneously

provide copies of the check and cover letter to:

Regional Hearing Clerk U.S. Environmental Protection Agency, Region I Suite 100, Mail Code ORA18-1 5 Post Office Square Boston, MA 02109-3912

and

John E. Hultgren Enforcement Counsel U.S. Environmental Protection Agency, Region I Suite 100, Mail Code OES4-02 5 Post Office Square Boston, MA 02109-3912

55. Pursuant to Section 113(d)(5) of the CAA, if Respondent fails to pay the penalty amount it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. 42 U.S.C. § 7413(d)(5). Interest will be assessed on the penalty if it is not paid by the due date established herein. In that event, interest will accrue from the date the CAFO was signed by the EPA Regional Judicial Officer at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that the penalty is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorneys' fees and collection costs. A quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter.

56. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.

D. <u>GENERAL PROVISIONS</u>

57. The civil penalty under Paragraph 53, above, any interest, and the nonpayment penalties and/or charges as described in Paragraph 55, above, shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes, and shall not be deductible for purposes of state, or local taxes unless allowed by law.

58. Payment of the civil penalty, and any interest, non-payment penalties, and/or other charges, does not waive, suspend, or modify the responsibility of Respondent to comply with the requirements of all of the federal laws and regulations administered by EPA and shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations.

59. This CAFO constitutes a settlement by EPA of all claims against Respondent for civil penalties pursuant to Section 113 of the Act for the violations alleged in Section B of this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

60. Except as described in Paragraph 55, each party shall bear its own costs and fees in this proceeding, including attorney's fees, and specifically waives any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

In the Matter of Cherenzia Excavation, Inc.: Docket No. CAA 01-2016-0037

61. Each party certifies that at least one of their undersigned representatives is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind such party to this document.

[The remainder of this page is intentionally left blank.]

FOR CHERENZIA EXCAVATION, INC

Name <u>A.C. C.</u> Date 5 12-16 Salvatore E concensa, # Title <u>U.ce</u> <u>Piesdent</u>

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Susan Studlien, Director

<u>05/23/2016</u> Date

Susan Studlien, Director Office of Environmental Stewardship U.S. Environmental Protection Agency, Region I

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John E. Hultgren I Enforcement Counsel U.S. Environmental Protection Agency, Region I

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the United States Environmental Protection Agency's Consolidated Rules of Practice, the parties to this matter have forwarded an executed Consent Agreement to me for final approval. In accordance with 40 C.F.R. § 22.18(b) and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the foregoing Consent Agreement resolving this matter is hereby incorporated by reference into this Final Order and is hereby ratified. Respondent, Cherenzia Excavation, Inc., is ordered to pay the civil penalty amount specified in the Consent Agreement (\$84,070) in the manner indicated. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Sharon Wells, Regional Judicial Officer U.S. Environmental Protection Agency, Region I

5/24/16

Date