**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 1**

| |
|---|
| In the Matter of:<br><br>Tiverton Materials, LLC and<br>Feeney Corp.<br><br>Respondent<br><br>Proceeding under Section 113(d) of the Clean Air Act |

Docket No. CAA-01-2026-0007

**CONSENT AGREEMENT AND FINAL ORDER**

## CONSENT AGREEMENT

### I. PRELIMINARY STATEMENT

1. The issuance of this Consent Agreement and Final Order ("CAFO"), in accordance with 40 C.F.R. § 22.13(b), simultaneously commences and concludes an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 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 United States Environmental Protection Agency, Region 1 ("EPA").

3. Respondents are Tiverton Materials, LLC ("Tiverton Materials", a wholly owned subsidiary of L.B. Materials and Equipment Holding Corp.), a Rhode Island corporation doing business in Rhode Island, and Feeney Corp. ("Feeney Corp.") a Massachusetts corporation doing business in Rhode Island (collectively, the "Respondents").

4. Complainant and Respondents (together, the "Parties"), having agreed that settlement of this action is in the public interest, consent to the entry of this CAFO without adjudication of any issues of law or fact herein. Respondents neither admit nor deny the specific factual allegations contained in this CAFO.

5. Respondents agree to comply with the CAFO's terms and conditions set out below.

## II. JURISDICTION

6. This CAFO is issued under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules at 40 C.F.R. Part 22.

7. EPA and the United States Department of Justice have jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for administrative penalty action in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

8. The Regional Judicial Officer is authorized to ratify this CAFO, which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b).

## III. STATUTORY AND REGULATORY AUTHORITY

*New Source Performance Standards*

9. Section 111 of the CAA, 42 U.S.C. § 7411, directs EPA to promulgate standards of performance for new or substantially modified stationary sources of pollution. 42 U.S.C. § 7411(b)(1)(B). *See* 74 Fed. Reg. 19294 (Apr. 28, 2009). These technology-based "New Source Performance Standards" ("NSPS") apply nationwide, regardless of where the stationary source is located or how clean the air is in the stationary source's location. The primary purpose of the NSPS is to attain and maintain ambient air quality by ensuring that the best demonstrated emission control technologies are installed as the industrial infrastructure is modernized. 74 Fed. Reg. 19294, 19295 (Apr. 28, 2009).

10. Section 111(a)(1) of the CAA requires that NSPS reflect the application of the best system of emission reductions which (taking into consideration the cost of achieving such emission reductions, any non-air quality health and environmental impact, and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as best demonstrated technology ("BDT"). 74 Fed. Reg. 19294, 19295 (Apr. 28, 2009).

11. Section 111(b)(1)(B) of the CAA requires EPA to periodically review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions.

12. Section 111(e) of the CAA specifies that, after the effective date of NSPS promulgated under Section 111, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

13. Pursuant to Section 111 of the CAA, EPA has also promulgated general NSPS provisions, set out at 40 C.F.R. Part 60, Subpart A ("Subpart A").

14. EPA has promulgated NSPS in 40 C.F.R. Part 60 for many types of stationary sources, including, among many others, mineral processing plants. The standards apply to the owner or operator of a stationary source that contains an affected facility (defined as any apparatus to which a particular NSPS standard is applicable), constructed or modified after the date of the standard applicable to the facility. 40 C.F.R. §§ 60.1 and 60.2.

15. In 2009, EPA promulgated NSPS Subpart OOO, found at 40 C.F.R. §§ 60.670–.676, to amend the existing NSPS for Nonmetallic Mineral Processing Plant(s) ("NMPP"). The amendments include revisions to the particulate emission limits for NMPP-affected facilities that commenced construction, modification, or reconstruction on or after April 22, 2008. 74 Fed. Reg. 19294 (April 28, 2009).

16. Subpart OOO applies to "affected facilities" in fixed or portable nonmetallic mineral processing plants that commence construction, modification, or reconstruction after August 31, 1983, specifically each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station. 40 C.F.R. § 60.670. This NSPS also applies to crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including, the first storage silo or bin are subject to the provisions of this subpart. *Id.* Subpart OOO includes emission limits for particulate matter, emission monitoring and inspection standards, performance test requirements, and reporting and recordkeeping requirements. 40 C.F.R. §§ 60.672, 60.674, 60.675, and 60.676.

*CAA Civil Penalties*

17. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), allow EPA to assess civil penalties for violations of Part 60. Forty C.F.R. Part 19 sets out the statutory penalties as adjusted for inflation.

## IV. FACTUAL BACKGROUND

18. Tiverton Materials is a full-service aggregate producer and supplier. L.B. Corp., a former affiliate, purchased a Facility, located at 810 Fish Road in Tiverton, Rhode Island ("Facility") on March 1, 2013.

19. At the time of purchase, all of the existing rock crushing equipment was decommissioned and removed from the site.

20. Tiverton Materials subcontracts out the rock crushing activities to a third party each calendar year.

21. Feeney Corp. is the subcontractor that owned and operated the rock crushing plant at the Facility in calendar year 2024.

22. Feeney Corp. began operating the rock crushing plant at the Facility in April 2024.

23. EPA conducted an on-site inspection of the Facility on November 20, 2024 ("EPA's Inspection").

24. Feeney Corp. operates one portable crushed stone plant at the Facility. The plant includes crushers, screening operations, and belt conveyors.

25. At the time of EPA's Inspection, Respondents had not submitted an initial startup notification or conducted emissions testing.

26. On November 29, 2024, James Manni of J.H. Lynch & Sons, on behalf of L.B. Corporation[1], submitted an initial startup notification for the rock crushing plant located at the Facility. As noted in paragraph 3, Tiverton Materials is a wholly-owned subsidiary of L.B. Materials and Equipment Holding Corp. This notification covered Feeney Corp.'s operation of the portable crushed stone plant at the Facility.

27. On May 15, 2025, Respondents conducted EPA Reference Method 9 visible emission testing on subject equipment associated with the rock crushing plant.

## V. ALLEGED VIOLATIONS OF LAW

28. The crushed stone plant meets the definition for nonmetallic mineral processing plants. *See* definition of "nonmetallic mineral" and "nonmetallic mineral processing plant" at 40 C.F.R. § 60.671.

29. The provisions of Subpart OOO do not apply to portable crushed stone plants with a capacity of 150 tons per hour or less. *See* 40 C.F.R. § 60.670(c)(2).

30. The crushed stone plant has a capacity of 500 tons per hour.

31. The provisions of Subpart OOO apply to facilities that commenced construction, modification, reconstruction after August 31, 1983. *See* 40 C.F.R. § 60.670(e).

[1] The startup notification inadvertently listed the original purchaser of the Facility as the owner. The correct owner's name is L.B. Materials and Equipment Holding Corp.

32. Feeney Corp. installed the crushed stone plant in April 2024.

33. Each of the sets of crushing jaws, cone and screen systems, and conveyor systems included in the crushed stone plant are "affected facilities" and subject to the provisions of Subpart OOO. *See* 40 C.F.R. § 60.670(a)(1) and definitions of "crusher," "production line," and "screening operation," in § 60.671.

34. The crushed stone plant does not include capture systems used to capture and transport particulate matter generated by the crusher to a control device. *See* 40 C.F.R. § 60.671.

35. 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., the applicable crushers, screeners, and conveyor belts) within 15 days after such date.

36. Respondents were required to submit a notification of the actual date of initial startup of each affected facility within 15 days of the actual startup in April 2024.

37. A notification of the actual date of initial startup of each affected facility was submitted to EPA on November 29, 2024.

38. Accordingly, Respondents violated 40 C.F.R. § 60.676(i).

39. Pursuant to 40 C.F.R. § 60.672(b), affected facilities without capture systems must meet the fugitive emission limits and compliance requirements in Table 3 of the 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.

40. Pursuant to 40 C.F.R. § 60.675(c), the owner or operator of an affected facility must determine compliance with 40 C.F.R. § 60.672(b) by performing EPA Reference Method 9 visible emission testing on each affected facility (e.g., the crushers, screeners, and conveyor belts).

41. Respondents were required to conduct EPA Reference Method 9 visible emission testing on all subject equipment associated with the rock crushing plant no later than 180 days after the initial startup in April 2024.

42. Respondents conducted the required EPA Reference Method 9 visible emissions testing on May 15, 2025.

43. Accordingly, from October 2024 to May 15, 2025, Respondents violated 40 C.F.R. §§ 60.672(b) and 60.675(c).

## VI. CONSENT AGREEMENT TERMS

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

a. admit that EPA has jurisdiction over the subject matter alleged in this CAFO;
b. neither admit nor deny the specific factual allegations contained in this CAFO;
c. consent to the assessment of a civil penalty as stated below;
d. consent to the conditions specified in this CAFO;
e. waive any right to contest the allegations in this CAFO; and
f. waive their rights to appeal the Final Order accompanying this Consent Agreement.

45. For the purpose of this proceeding, Respondents further:

a. agree that this CAFO states a claim upon which relief may be granted against Respondents;
b. acknowledge that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
c. waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);
d. consent to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the District of Rhode Island;
e. waive any rights they may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agree that federal law shall govern in any such civil action; and
f. waive any rights or defenses that Respondents have or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waive any right to challenge the lawfulness of the final order accompanying the consent agreement.

46. Respondents certify that they have corrected the violations alleged in this CAFO and are currently in compliance with the CAA regulations cited in this CAFO.

47. Penalty Payment:

a. Respondents agree to pay a civil penalty of $37,000 ("Assessed Penalty") within thirty (30) calendar days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").
b. Respondents shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of methods, provided on the EPA website https://www.epa.gov/financial/makepayment. For additional instructions see: http://www.epa.gov/financial/additional-instructions-making-payments-epa. However, for any payments made after September 30, 2025, and in accordance with the March 25, 2025 Executive Order on Modernizing Payments To and From America's Bank Account, Respondents shall pay using one of the electronic payment methods listed on EPA's How to Make a Payment website and will not pay with a paper check.
c. When making a payment, Respondents shall:
    i. Identify every payment with "*In the Matter of Tiverton Materials, LLC and Feeney Corp., Docket No. CAA-01-2026-0007*"; and
    ii. Concurrently with any payment or within 24 hours of any payment, serve proof of such payment to the following via email:

Tahani Rivers
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
rivers.tahani@epa.gov

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
Santiago.Wanda@epa.gov
and
R1_Hearing_Clerk_Filings@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made

according to the EPA requirements, in the amount due, and identified with "*In the Matter of Tiverton Materials, LLC and Feeney Corp., Docket No. CAA-01-2026-0007.*"

d. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondents fail to timely pay the full amount of the Assessed Penalty per this CAFO, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.
    i. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, accrued interest is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7413(d)(5), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is, the underpayment rate equal to the Federal short-term rate plus three percentage points.
    ii. Handling Charges. The United States' enforcement expenses, including, but not limited to, attorney's fees and costs of handling collection.
    iii. Late Payment Penalty. A ten (10%) quarterly non-payment penalty.

48. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondents fail to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
d. Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the full remaining balance of the Assessed Penalty in addition to interest and the amounts discussed above pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the Assessed Penalties and Final Order shall not be subject to review.

49. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

50. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

51. W-9 Form

a. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to annually send to the Internal Revenue Service ("IRS"), a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondents to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and each Respondent herein agrees, that:
    i. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf;
    ii. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
    iii. Respondent shall email its completed IRS Form W-9 to EPA's Cincinnati Finance Center at chalifoux.jessica@epa.gov, on or before the date the Respondent's penalty payment is due, pursuant to Paragraph 47, or within 7 days should the order become effective between December 15 and December 31 of the calendar year. EPA recommends encrypting IRS Form W-9 email correspondence; and
    iv. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

## VII. ADDITIONAL PROVISIONS

52. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and the approval of the Regional Judicial Officer.

53. By signing this CAFO, Respondents acknowledge that this CAFO will be available to the public and agree that this CAFO does not contain any confidential business information or personally identifiable information.

54. By signing this CAFO, each undersigned representative of the Parties certifies that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party that he or she represents. The Parties consent to the use of digital signatures on this CAFO, and Respondents further consent to receipt of service of the CAFO, once filed, by electronic mail at Hinckley Allen & Snyder LP, c/o Robin Main, Esq. at rmain@hinckleyallen.com and Jonathan Cardosi at Jcardosi@jhlynch.com. Respondents understand that these e-mail addresses may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

55. Complainant has provided Respondents with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with and be maintained in accordance with that Order.

56. By signing this CAFO, the Parties agree that each party's obligations under this CAFO and EPA's compromise of statutory maximum penalties constitute sufficient consideration for the other party's obligations.

57. By signing this CAFO, Respondents certify that the information they have supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondents acknowledge that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

## VIII. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

58. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged above.

59. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

60. This CAFO 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.

61. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties as provided in Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). EPA may use any information submitted by Respondent pursuant to this CAFO in an administrative, civil judicial, or criminal action.

62. Nothing in this CAFO shall relieve Respondents of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, and nothing in this CAFO shall restrict EPA's authority to seek compliance with any applicable laws or regulations, or be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

63. This CAFO in no way relieves Respondents or their employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondents in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

64. Except as qualified by Paragraphs 47 and 48, each party shall bear its own costs and fees in this proceeding including attorney's fees. Respondents specifically waive any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

## IX. EFFECTIVE DATE

65. Respondents and Complainant agree to issuance of the attached Final Order. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

FOR RESPONDENT:

Signature

2/26/26
Date

Brian Bettenhausen, Manager
Tiverton Materials, LLC

FOR RESPONDENT:

Signature
David M. Walsh, President
Feeney Corp.

SA

3/6/26
Date

FOR COMPLAINANT:

JAMES CHOW Digitally signed by JAMES CHOW
Date: 2026.03.17 11:20:33 -04'00'

_____ _____

James Chow, Director
Enforcement and Compliance Assurance Division
EPA Region 1

Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 1**

| | |
|---|---|
| In the Matter of:<br><br>Tiverton Materials, LLC and<br>Feeney Corp.<br>Respondents.<br><br>Proceeding under Section 113(d) of the Clean Air Act | Docket No. CAA-01-2026-0007<br><br>**CONSENT AGREEMENT AND FINAL ORDER** |

**FINAL ORDER**

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of EPA's Consolidated Rules and Sections 113(d)(1) and (d)(2)(B) of the CAA, 42 U.S.C. §§ 7413(d)(1) and (d)(2)(B), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

Respondents Tiverton Materials, LLC and Feeney Corp. are ORDERED to comply with all terms of the Consent Agreement, which shall become effective on the date it is filed with the Regional Hearing Clerk.

**SO ORDERED:**

MICHAEL KNAPP

Digitally signed by MICHAEL KNAPP
Date: 2026.03.18 13:31:56 -04'00'

_____

Michael J. Knapp
Regional Judicial Officer
EPA Region 1

_____

Date