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REGIONAL OFFICE OF THE  
EPA (DALLAS)

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

In the Matter of:

CAPITOL AGGREGATES, INC.,

Respondent.

Docket No. CAA-06-2015-3319

CONSENT AGREEMENT

**A. PRELIMINARY STATEMENT**

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act, (the "CAA" or "Act"), 42 U.S.C. § 7413(d), and Sections 22.13, 22.18, and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region 6 (the "EPA"). On the EPA's behalf, John Blevins, Director of the Compliance Assurance and Enforcement Division, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Respondent is a corporation doing business in the state of Texas. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement along with the corresponding Final Order hereinafter known together as "CAFO" without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

5. For the purposes of this proceeding, Respondent admits that the EPA has jurisdiction over the subject matter alleged in this CAFO and Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

#### **B. JURISDICTION**

6. This CAFO is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this CAFO are pursuant to Section 113(a)(1)(B).

7. The EPA and the United States Department of Justice jointly determined that this matter, although it alleged violations that occurred more than a year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

8. In satisfaction of the notice requirements of section 113(a)(1), on May 26, 2009, the EPA issued to Respondent a notice of violation ("NOV") and provided a copy of the NOV to Texas, providing notice to both that the EPA had found that Respondent committed the alleged violations described in Section E of this CAFO and providing Respondent an opportunity to confer with the EPA. On July 24, 2009, representatives of the Respondent and the EPA discussed the May 26, 2009 NOV.

9. 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).

10. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

#### **C. GOVERNING LAW**

11. The Clean Air Act is 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.

Section 101 (b)(1) of the Act, 42 U.S.C. §§ 7401(b)(1).

12. Section 109(a) of the CAA, 42 U.S.C. § 7409(a), requires the Administrator of EPA to publish national ambient air quality standards ("NAAQS") for certain pollutants. The NAAQS establish primary air quality standards to protect public health and secondary standards to protect public welfare. See Section 109(b) of the CAA, 42 U.S.C. § 7409(b).

13. The Administrator has promulgated NAAQS for nitrogen dioxide ("NO<sub>2</sub>") (which is a nitrous oxide) and sulfur dioxide (SO<sub>2</sub>). See 40 C.F.R. §§ 50.4, 50.5 (1996), 40 C.F.R. § 50.8 (1985), and 40 C.F.R. § 50.11 (1985).

14. To achieve the objectives of the NAAQS and the CAA, Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each state to adopt and submit a plan to the Administrator that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region. This plan is known as an applicable implementation plan or state implementation plan ("SIP").

15. Areas that are attainment or unclassifiable are subject to statutory and regulatory Prevention of Significant Deterioration ("PSD") provisions. See Subchapter I, Part C of the CAA, 42 U.S.C. §§ 7470-7492 and 40 C.F.R. § 52.21 (1980) (1997 and 2000 Editions).

16. Section 110(a)(2)(C) of the CAA, 42 U.S.C. § 7410(a)(2)(C), requires that each applicable implementation plan include a PSD permit program as provided in Subchapter I, Part C of the CAA, 42 U.S.C. §§ 7470-7492. Pursuant to Subchapter I, Part C of the CAA, 42 U.S.C. §§ 7470-7492, EPA promulgated 40 C.F.R. § 52.21, the PSD regulations.

17. The provisions of 40 C.F.R. § 52.21(b) through (w) were incorporated by reference and made part of Texas's applicable implementation plan in 1997. See 62 Fed. Reg. 44087 (August 19, 1997).

18. The Texas SIP in effect at the times relevant to this matter addressed PSD requirements in several places within the Texas Administrative Code. The Texas SIP and PSD regulations required that any person who planned to construct any new facility or engage in the modification of any existing

facility to obtain a permit to construct pursuant to 30 T.A.C. § 116.3. See 30 T.A.C. § 116.1 (1997) and 40 C.F.R. § 52.21(i)(1).

19. The requirements of paragraphs (j) through (f) of 40 C.F.R. § 52.21 apply to any major stationary source and any major modification proposed to be constructed in an attainment or unclassifiable area. The requirements apply with respect to each pollutant subject to regulation under the CAA that it would emit. See 40 C.F.R. § 52.21(i)(2)-(3).

20. If a source meets the criteria above, then it is subject to the PSD permitting process. The PSD permitting process requires, among other things, applying for, obtaining, and operating pursuant to, a PSD permit, an analysis of source impacts, air quality modeling and analysis, the application of BACT, and meaningful public participation in the process. See 40 C.F.R. § 52.21(j)-(q).

21. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21 who constructs or operates a source not in accordance with a PSD application or commences construction without applying for and receiving approval thereunder is subject to an enforcement action. See 40 C.F.R. § 52.21(r)(1).

#### **D. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

22. Capitol Aggregates, Inc. ("Capitol" or "Respondent") owns and operates a Portland cement manufacturing facility located in San Antonio, Bexar County, Texas (the "Facility").

23. The Respondent is the owner and operator of the Facility within the meaning of the Act, Section 111(a)(5), 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2.

24. At all times relevant to this proceeding, Respondent owned and/or operated units that emitted SO<sub>2</sub> and nitrous oxides (NO<sub>x</sub>) at the Facility.

25. At all times relevant to this matter, the Facility was a "major stationary source" within the meaning of the CAA, the PSD regulations, and the applicable implementation plan. At all times

relevant to this action, the Facility was a "major source" within the meaning of the CAA's Title V program and 40 C.F.R. § 70.2 (1992) and the Texas Administrative Code, 30 T.A.C. § 122.10(13).

26. At all times relevant to this action, the Facility has been a major source of SO<sub>2</sub> and NO<sub>x</sub> as a result of emissions from the cement kiln system.

27. At all times relevant to the present action, Bexar County, Texas, was classified as attainment or unclassifiable all criteria pollutants, including SO<sub>2</sub> and NO<sub>x</sub>. See 40 C.F.R. § 81.344.

28. Over the course of its operation, the Facility has undergone numerous changes and upgrades. This action focuses on two (2) projects Respondent undertook at the Facility in 2000 and 2001.

29. Respondent has resolved the alleged violations set forth in Section E of this CAFO.

#### **E. ALLEGED VIOLATIONS**

##### ***PSD ALLEGED VIOLATIONS***

30. During the time of the alleged modifications at the Facility, the Texas PSD program incorporated the relevant PSD regulations promulgated by EPA in 40 C.F.R. Part 52.<sup>1</sup>

31. In or about the fall of 1998 Capitol implemented a project to increase the capacity of its dry kiln. This project, "Project 2000," went through the PSD permitting process and received a permit from the Texas Natural Resource Conservation Commission (TNRCC), the predecessor agency to the Texas Commission on Environmental Quality (TCEQ), on September 16, 1998.

32. On or about March 30, 2000, Capitol implemented a project ("Stage II Cyclone Replacement") to reduce a production bottleneck caused by the implementation of Project 2000. The project included, but was not limited to, modification of the Stage I and Stage II cyclones to allow more

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<sup>1</sup> On June 24, 1992, EPA first approved Texas' PSD program. See 57 Fed. Reg. 28093, effective July 24, 1992. EPA has approved subsequent revisions to the Texas PSD program. 40 C.F.R. §§ 52.2270(e) and 52.2303  
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process gas to pass through the preheater tower and to reduce the pressure drop, which would allow the ID fan to move more gases.

33. The Stage II Replacement and Modification caused an actual production increase over the maximum production rate represented in the 1998 PSD permit application. Respondent did not inform TNRCC, or seek to amend the 1998 PSD Permit to reflect that the Stage II Cyclone Replacement would increase its dry kiln clinker production beyond the production upon which the 1998 PSD permit was based.

34. EPA alleges that the project referenced in paragraph 32 above, which included changes to the pre-heater system and the gas flow, constitute a "modification" resulting in Respondent's potential to emit increased beyond the significance level for SO<sub>2</sub> and NO<sub>x</sub> resulting in a significant net emission increase of SO<sub>2</sub> and NO<sub>x</sub>, and triggering the requirements of Chapter 116 of the Texas Administrative Code applicable to major modifications at major sources.

35. In or about 2001, Respondent implemented a project which involved the construction of a new solid fuel handling (grinding, conveyance, moisture control, and dust control) system and changes to the calciner and the fuel feed systems for the kilns at the Facility. This physical change was made so that Respondent could replace natural gas fuel with solid fuels—primarily coal, but also petroleum coke and tire-derived fuel.

36. After Respondent began full operation of new the solid fuel handling system and began replacing natural gas with solid fuel, on or about April 1, 2002, emissions of SO<sub>2</sub> and NO<sub>x</sub> from its dry kiln increased.

37. EPA alleges that the project referenced in paragraph 35 above, which included changes to pre-heater system and the gas flow, constitute a modification resulting in Respondent's potential to emit increased beyond the significance level for SO<sub>2</sub> and NO<sub>x</sub> resulting in a significant net emission

increase of SO<sub>2</sub> and NO<sub>x</sub>, and triggering the requirements of Chapter 116 of the Texas Administrative Code applicable to major modifications at major sources.

38. Respondent failed to apply for, obtain, or operate pursuant to, a PSD permit for the modifications.

39. By failing to apply for and obtain a PSD permit, Respondent failed to: 1) undergo proper PSD BACT analysis, 2) install and operate BACT for the control of NO<sub>x</sub>, 3) demonstrate that allowable emission increases from the modification would not cause or contribute to air pollution violations, 4) provide for review and public comment on the air quality impacts of the modification, and 5) provide for or receive review of the modification by the proper permitting authority. See Section 165(a) of the CAA, 42 U.S.C. § 7475(a) and 40 C.F.R. § 52.21(j)-(q); 30 T.A.C. §§ 116.160, 116.1, and 116.3 (Texas SIP).

40. Respondent's modification and operation of the new solid fuel handling system without a PSD permit constitutes a continuing violation of the CAA and the applicable implementation plan.

#### F. CIVIL PENALTY AND CONDITIONS OF SETTLEMENT

##### General

41. 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 CAFO;
- b. neither admits nor denies the specific factual allegations contained in the CAFO;
- 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;<sup>2</sup>

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<sup>2</sup> Although 40 C.F.R. § 22.18(b)(2) requires this statement, it is not applicable to this Consent Agreement.  
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- e. consents to the conditions specified in this CAFO;
- f. consents to any stated Permit Action;<sup>3</sup>
- g. waives any right to contest the alleged violations set forth in Section E of this CAFO; and
- h. waives its rights to appeal the Final Order included in this CAFO.

42. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this CAFO 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 CAFO, 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 CAFO in the United States District Court for the Western District of Texas;
- e. waives any right 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 this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and

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<sup>3</sup> *Id.*  
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- f. agrees that in any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other relief relating to this Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defenses based on any contention that the claims raised by the Complainant or the United States were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

#### Penalty Assessment and Collection

43. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, EPA has assessed a civil penalty in the amount of forty eight thousand dollars (\$48,000.00) ("EPA Penalty"). The EPA Penalty has been determined in accordance with the Section 113 of the Act, 42, U.S.C. § 7413 and at no time exceeded EPA's statutory authority.

44. Respondent agrees to:

- a. pay the EPA Penalty within 30 calendar days of the Effective Date of this CAFO,
- b. pay the EPA Penalty by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA -- Region 6." Payment shall be remitted in one of five (5) ways: (1) regular U.S. Postal Service mail

including certified mail; (2) overnight mail; (3) wire transfer; (4) Automated Clearinghouse for receiving US currency; or (5) On Line Payment.

For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, payment should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. FedEx), payment should be remitted to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
(314) 418-4087

For wire transfer, payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact—Jesse White (301) 887-6548

For On Line Payment:

<https://www.pay.gov/paygov/>  
Enter sfo 1.1 in search field  
Open form and complete required fields.

PLEASE NOTE: The docket number CAA-06-2015-3319 should be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter that shall reference Capitol's name and address, the case name, and docket number CAA-06-2015-3319. Capitol's adherence to this request will ensure proper credit is given when penalties are received for the Region. Capitol shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following addresses:

Kathleen Aisling  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

And

Region 6 Hearing Clerk (GRC-D)

U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

45. Respondent agrees to pay the following on any overdue EPA Penalty:

a. Interest. Pursuant to Section 113(a)(5) of the Act, 42 U.S.C. § 7413(a)(5), any unpaid portion of a civil penalty must bear interest at the rates established pursuant to 26 U.S.C. § 6621(a)(2).

b. Non-Payment Penalty. On any portion of a civil penalty more than 90 calendar days delinquent, Respondent must pay a non-payment penalty, pursuant to Section 113(a)(5) of the Act, 42 U.S.C. § 7413(a)(5), which shall accrue from the date the penalty payment became delinquent, and which shall be in addition to the interest which accrues under subparagraph (a) of this paragraph.

46. Respondent shall pay a charge to cover the cost of processing and handling any delinquent penalty claim, pursuant to 42 U.S.C. § 7413(d)(5), including but not limited to attorneys' fees incurred by the United States for collection proceedings.

47. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court (in which the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review) to secure payment of the debt, which may include the original penalty, enforcement expenses, non-payment penalty and interest, 42 U.S.C. § 7413(d)(5) and 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- b. collect the above-referenced debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

#### Conditions of Settlement

48. Respondent has resolved the alleged violations set forth in Section E of this CAFO.

Mitigation Projects

49. Capitol shall implement the Environmental Mitigation Actions ("Mitigation Actions") described in paragraph 53 of this CAFO in compliance with the approved projects and schedules for such Project.

50. Capitol shall maintain, and present to the EPA upon request, all documents to substantiate the mitigation dollars expended and shall provide these documents to the EPA within thirty (30) days of a request by the EPA for the documents.

51. Respondent shall certify that Capitol is not otherwise required by law to perform the Mitigation Actions described in the paragraph 53, that Capitol is unaware of any other person who is required by law to perform the Mitigation Actions, and that Capitol will not use any Mitigation Actions, or portion thereof, to satisfy any obligations that it may have under other applicable requirements of law.

52. Capitol shall complete the Mitigation Actions described in paragraph 53 within one (1) year of the Effective Date of this document and shall notify the EPA upon completion of the Mitigation Actions.

53. As a Condition of Settlement, Respondent agrees to the following Mitigation Actions to replace equipment at the Facility:

- a. Replace a 1994 450 horsepower (hp) Euclid diesel haul truck with a 2013 Tier 3 Caterpillar 770 haul truck;
- b. Replace a 1989 45 hp diesel forklift with a 2010 or newer Tier 3 Bobcat diesel;
- c. Replace a 1998 45 hp Bobcat with a 2010 or newer Tier 3 Bobcat; and
- d. Replace a 1993 Nissan forklift with a 2014, Nissan Model AF50DF, Tier 3 or better forklift.

54. Within sixty (60) days following the completion of the Mitigation Actions required under this CAFO, Capitol shall submit to the EPA a report that documents the date that the Mitigation Action was completed, Capitol's results of implementing the Mitigation Action, including the emission reductions or other environmental benefits achieved, and the cost expended by Capitol in implementing the Mitigation Action.

55. At such time as Capitol believes that it has complied with all terms and conditions of this CAFO, Capitol agrees to certify to EPA completion of the Conditions of Settlement in Paragraph 53 above and provide any necessary documentation. Respondent represents that the signing representative will be fully authorized by Respondent to certify that the terms and conditions of this CAFO have been met. The certification should include the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fines and imprisonment.

The certification required above shall be sent to:

Kathleen Aisling  
Air Enforcement Section  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
[aisling.kathleen@epa.gov]

EPA has 90 days to respond with questions or disagreement that the conditions of the CAFO have been satisfied.

56. Respondent agrees that the time period from the Effective Date of this CAFO until all the conditions specified in Paragraph 53 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims set forth in Section E of this CAFO (the "Tolled Claims"). Respondent shall

not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

57. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 56, Respondent must give written notice and a copy of this CAFO to any successors in interest prior to transfer of ownership or control of any portion or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment or delegation, Respondent shall continue to be bound by the obligations or liabilities of this CAFO until the EPA has provided written approval.

58. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information.

59. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has legal capacity to bind the party he or she represents to this CAFO.

60. By signing this CAFO, both parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations. Additionally, both parties agree that Complainant's covenant not to sue Respondent (stated in Paragraph 64) during the time period between the issuance of the attached Final Order and the deadline (stated in Paragraph 64) constitutes sufficient consideration for Respondent's obligation to completely perform the Conditions of

Settlement described in Paragraph 53, regardless of whether the covenant not to sue subsequently terminates.

61. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each submission, response, and statement. Respondent acknowledges 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.

62. Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17. Except as qualified by Paragraph 46, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **G. EFFECT OF CONSENT AGREEMENTS AND FINAL ORDER**

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

64. Complainant covenants not to sue Respondent for injunctive or other equitable relief for the violations and facts alleged in this matter, but such covenant terminates if and when Respondent fails to timely and satisfactorily complete every condition stated in paragraph 53 (including payment of any stipulated penalties owed). The covenant not to sue becomes permanent upon satisfactory performance of the conditions of this CAFO. If and when such covenant terminates, Complainant may compel performance of the conditions stated in Paragraph 53, seek civil penalties that accrue from the Effective Date of this CAFO until compliance is achieved, and seek other relief in a civil judicial action pursuant to the Clean Air Act, pursuant to contract law, or both.

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



66. 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.

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

68. Any violation of the included Final Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day of violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

69. Nothing in this CAFO 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 a determination of, any issue related to any federal, state, or local permit.

70. 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.

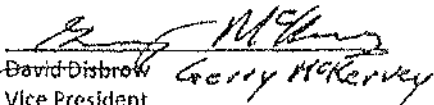
#### H. EFFECTIVE DATE

71. Respondent and Complainant agree to the issuance of the included Final Order. Upon filing the EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Hearing Clerk.

The foregoing CAFO in the Matter of Capitol Aggregates, Inc., Docket No. CAA-06-2015-3319, is hereby Stipulated, Agreed, and Approved for Entry.

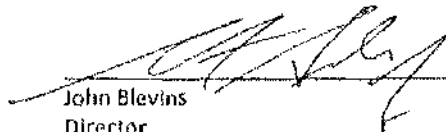
FOR RESPONDENT:

June 22, 2015  
DATE

  
David Disbrow  
Vice President  
Capitol Aggregates, Inc.  
2930 N. Loop 1604 W.  
San Antonio, TX 78248

FOR COMPLAINANT:

JUN 23 2015  
DATE

  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

In the Matter of:

CAPITOL AGGREGATES, LTD.,

Respondent.


Docket No. CAA-06-2015-3319

**FINAL ORDER**

Pursuant to Section 113(d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

Respondent is ORDERED to comply with all terms of the Consent Agreement. In accordance with 40 C.F.R. §22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

6/25/15  
DATE



Tom Rucki  
Regional Judicial Officer  
U.S. EPA, Region 6

**CERTIFICATE OF SERVICE**

I certify that the foregoing Consent Agreement and Final Order, in the Matter of Capitol Aggregates, Inc., Docket No. CAA-06-2015-3319, were filed and copies of the same were hand delivered to the Regional Hearing Clerk, U.S. EPA – Region 6, 1445 Ross Ave., Ste. 1200, Dallas, Texas and mailed to the parties as indicated below.

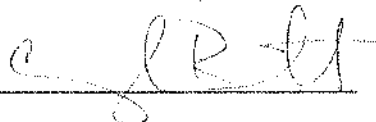
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Capitol Aggregates, Inc.  
2330 N. Loop 1604 W.  
San Antonio, TX 78248

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

C T Corporation System  
1999 Bryan Street  
Suite 900  
Dallas, TX 75201-3136  
Phone: 214-979-1172

06/25/15  
DATE



U.S. EPA, Region 6  
Dallas, Texas