

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

2011 APR 29 AM 11:35
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK

IN RE:)	
)	DOCKET NO. CAA-9-2010-0004
)	
NATIONAL SPECIALTY AGGREGATES, LLC,)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
RESPONDENT)	
_____)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA Region IX”) and National Specialty Aggregates, LLC (“Respondent”) agree to settle this case initiated under the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. §§ 7401 et seq., and consent to the entry of this Consent Agreement and Final Order (“CAFO”).

A. AUTHORITY AND PARTIES

1. EPA initiated this civil administrative proceeding for the assessment of a civil administrative penalty pursuant to Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, by issuing a Complaint and Notice of Opportunity for Hearing (the “Complaint”) against Respondent on September 28, 2010.
2. The Complaint alleges that Respondent violated Maricopa County Air Quality Department Regulation III, Rule 316, and Section 110 of the Act, 42 U.S.C. § 7410.
3. EPA Region IX and Respondent have agreed to resolve and fully settle this civil



administrative proceeding arising under the Act by executing this CAFO.

B. RESPONDENT'S ADMISSIONS

4. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the Complaint; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.C of this CAFO; (iv) waives any right to contest the allegations contained in the Complaint; and (v) waives the right to appeal the proposed final order contained in this CAFO.

C. CIVIL ADMINISTRATIVE PENALTY

5. In settlement of the violations specifically alleged in the Complaint, Respondent shall pay a civil administrative penalty of THIRTY-THREE THOUSAND AND ONE HUNDRED FORTY-TWO DOLLARS (\$33,142), plus interest, according to the terms of this CAFO and Attachment 1, attached hereto, which specifies an installment payment plan and interest schedule. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

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

The payment by check shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment by of the penalty, Respondent shall send a copy of the check and transmittal letter to the

following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

David H. Kim
Office of Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

6. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
7. If Respondent fails to pay the civil administrative penalty by the deadlines specified in Attachment 1, then Respondent shall immediately pay to EPA the stipulated penalty of FIVE THOUSAND DOLLARS (\$5,000) plus the remaining balance of the penalty sum specified in Paragraph 5. In addition, failure to pay the civil administrative penalty within the deadlines specified in Attachment 1 of this CAFO may lead to any or all of the following actions:
 - a. The debt being referred 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. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
 - b. The debt being collected 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.

- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty within the deadlines specified in paragraph 5. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

D. RETENTION OF RIGHTS

- 8. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability

for federal civil penalties for the violations and facts specifically alleged in the Complaint. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in the Complaint; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in the Complaint.

9. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

E. ATTORNEYS' FEES AND COSTS

10. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

F. EFFECTIVE DATE

11. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

G. BINDING EFFECT

12. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
13. 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.

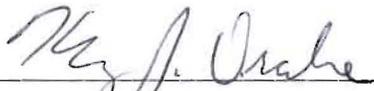
FOR NATIONAL SPECIALTY AGGREGATES, LLC:

04/25/2011
DATE


By: DARRELL ECKSTEIN
Title: PRESIDENT
Address: 4310 S. 80th. Street
Mesa, AZ 85212

FOR COMPLAINANT EPA REGION IX:

4/28/11
DATE


for Deborah Jordan

Director
Air Division
United States Environmental
Protection Agency, Region IX

75 Hawthorne Street
San Francisco, California 94105

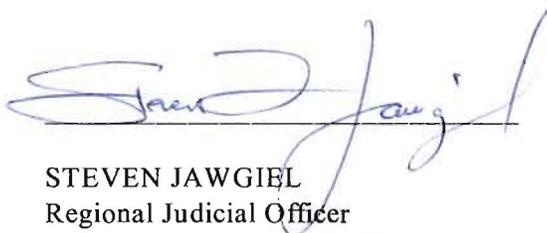
II. FINAL ORDER

EPA Region IX and National Specialty Aggregates, LLC, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2010-0004) be entered, and Respondent shall pay a civil administrative penalty in the amount of \$33,142, plus interest, and otherwise comply with the terms set forth in the CAFO.

04/29/11

DATE

A handwritten signature in blue ink, appearing to read "Steven Jawgiel", written over a horizontal line.

STEVEN JAWGIEL
Regional Judicial Officer
United States Environmental
Protection Agency, Region IX

ATTACHMENT 1

**INSTALLMENT PAYMENT AND INTEREST SCHEDULE
DOCKET NO. CAA-09-2010-0004**

Principal	Days	Interest Payment	Principal	Installment Payment
\$33,142	30	\$0	\$11,048	\$11,048
\$22,094	150	\$110.47	\$11,047	\$11,157.47
\$11,047	180	\$55.24	\$11,047	\$11,102.24
Totals		\$165.71	\$33,142	\$33,307.71

1st Installment: \$11,048.00 (Due within 30 days of the effective date of the Consent Agreement and Final Order)

2nd Installment: \$11,157.47 (Due within 150 days after the deadline for the first installment payment)

3rd Installment: \$11,102.24 (Due within 180 days after the deadline for the second installment payment)

Total Payment: \$33,307.71

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to:

The Regional Hearing Clerk
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, addressed to the following:

Dean Lipski
Plant Manager
National Specialty Aggregates, LLC
4310 South 80th Street
Mesa, AZ 85212

- CERTIFIED

James D. Lynch, Esq.
Stan Curry, Esq.
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, AZ 85016

Dated: 4/29/11

By: 
Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX