

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219**



**In the Matter of:** )  
 )  
HAMM, INC., ) **Docket No. CAA 07-2023-0090**  
 )  
**Respondent.** )  
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**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. This is 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 7 (the “EPA”). On the EPA’s behalf and as delegated by the Administrator of the EPA and the Regional Administrator of Region 7, the Director of the Enforcement and Compliance Division is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA.

3. Respondent Hamm, Inc., organized as a for profit corporation in the State of Kansas and authorized to do business in the State of Kansas, owns and/or operates an existing municipal solid waste (MSW) landfill, Hamm Sanitary Landfill, in Lawrence, Kansas.

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

**II. JURISDICTION**

5. This Consent Agreement is entered into under Section 113(d) of the CAA, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this Consent Agreement are enforced pursuant to Section 113(a)(3)(A).

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

7. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

8. The EPA Administrator and the United States Attorney General, through their delegated representatives, have jointly determined that this administrative penalty action is appropriate for a longer period of violation than the time limitation set forth in Section 113(d) of the CAA.

### **III. GOVERNING LAW**

9. The CAA is designed “to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

10. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” as an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

#### **40 C.F.R. Part 62, Subpart OOO**

11. Section 111 of the CAA, 42 U.S.C. § 7411, authorizes the EPA to develop technology-based standards that apply to specific categories of stationary sources. The New Source Performance Standards (NSPS) apply to new, modified, and reconstructed affected facilities in specific source categories. The NSPS are developed and implemented by EPA and are delegated to the states. However, even when delegated to the states, EPA retains authority to implement and enforce the NSPS.

12. Section 111(a)(3) defines “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant.” 42 U.S.C. § 7411(a)(3).

13. “Owner or operator” is defined as “any person who owns, leases, operates, controls, or supervises a stationary source.” 42 U.S.C. § 7411(a)(5).

14. Pursuant to this authority, the EPA promulgated general regulations applicable to all NSPS source categories in 40 C.F.R. Part 60, Subparts A and B. In addition, the EPA promulgated regulations set forth at 40 C.F.R. Part 62, Subpart OOO which apply to affected facilities in the municipal solid waste landfill industry that commenced construction, reconstruction or modification after July 17, 2014.

15. 40 C.F.R. Part 62, Subpart OOO was adopted on May 21, 2021. These regulations replaced the original performance standards for new municipal solid waste landfills, promulgated in 1996 at 40 C.F.R. Part 60, Subpart WWW.

16. Subpart OOO was promulgated due to EPA's determination that emissions from municipal solid waste landfills cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. Landfill emissions consist primarily of methane and carbon dioxide, as well as more than 100 different non-methane organic compounds (NMOCs) such as ethane, toluene, and benzene.

17. Subpart OOO defines "municipal solid waste landfill" as "an entire disposal facility in a contiguous geographical space where household waste is placed in or on land." 40 C.F.R. § 62.16730.

18. Each owner or operator of a MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters is subject to part 70 or 71 permitting requirements and shall calculate a NMOC emission rate in accordance with 40 C.F.R. § 62.16718.

19. If the calculated NMOC emission rate is above 34 megagrams per year, the MSW landfill must install a collection and control system that captures gas generated in the landfill. 40 C.F.R. §§ 62.16712, 62.16714(a)(3).

20. Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of 40 C.F.R. § 62.16714 of this part shall comply with the provisions of the operational standards for gas collection and control systems, including operating the collection system so that the methane concentration is less than 500 parts per million (ppm) above background at the surface of the landfill. 40 C.F.R. § 62.16716(d).

21. The owner or operator must monitor surface concentrations of methane along the entire perimeter of the collection area on a quarterly basis. Any reading of 500 ppm or more above background at any location must be recorded as a monitored exceedance and specified actions must be taken. 40 C.F.R. § 62.16720(c)(4). Such specified action includes performing cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance and to re-monitor the location within ten (10) calendar days of detecting the exceedance. 40 C.F.R. § 62.16720(c)(4)(ii).

22. Provided the specified actions are taken, the exceedance is not a violation of the operational requirements of 40 C.F.R. § 62.16716(d). 40 C.F.R. § 62.16720(c)(4).

23. After the effective date of any standard of performance promulgated under Section 111 of the CAA that is applicable to a source, no person may operate such source in violation of such standard. 42 U.S.C. § 7411(e).

#### **NESHAP 40 C.F.R. Part 63, Subpart AAAA**

24. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes the Administrator of EPA to regulate hazardous air pollutants (HAPs) that may have an adverse effect on health or the environment. The Administrator established emissions standards, the National Emissions

Standards for Hazardous Air Pollutants (NESHAPs), which apply to specific categories of major sources and area sources of listed hazardous air pollutants that emit listed HAPs. The NESHAPs are developed and implemented by EPA and are delegated to the states. However, even when delegated to the states, EPA retains the authority to implement and enforce the NESHAPs.

25. “Stationary source” under Section 112 has the same meaning as the term has under Section 111(a)(3) of the CAA. 42 U.S.C. § 7412(a)(3).

26. Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), defines “major source” as any stationary source or group of stationary sources located in a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, ten (10) tons per year or more of any single HAP or twenty-five (25) tons per year or more of any combination of HAPs.

27. An “area source” is any source that is not a “major source.” 42 U.S.C. § 7412(a)(2).

28. 40 C.F.R. Part 63 applies to the owner or operator of any stationary source that— (i) emits or has the potential to emit any HAP listed in or pursuant to section 112(b) of the CAA; and (ii) is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to this part. 40 C.F.R. § 63.1(b)(1).

29. The requirements of NESHAPs at 40 C.F.R. Part 63, Subpart AAAA apply to municipal solid waste landfills that commenced construction on or before July 17, 2014.

30. 40 C.F.R. Part 63 Subpart AAAA applies to MSW Landfills that have accepted waste since November 8, 1987, and are an area source landfill that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and has estimated uncontrolled emissions equal to or greater than 50 megagrams per year NMOC. 40 C.F.R. § 63.1935(a).

31. An “affected source” is defined as a “collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the [CAA].” 40 C.F.R. § 63.2.

32. If the calculated NMOC is above 50 megagrams per year, the MSW landfill must install a collection and control system that captures gas generated in the landfill. 40 C.F.R. § 63.1959.

33. Each owner or operator of an MSW landfill with a gas collection and control system shall comply with the provisions of the operational standards for gas collection and control systems, including operating the collection system so that the methane concentration is less than 500 parts per million (ppm) above background at the surface of the landfill. 40 C.F.R. § 63.1958(d).

34. The owner or operator must monitor surface concentrations of methane along the entire perimeter of the collection area on a quarterly basis. Any reading of 500 ppm or more above background at any location must be recorded as a monitored exceedance and specified actions must be taken. 40 C.F.R. § 63.1960(c).

35. 40 C.F.R. § 63.1960(c)(4)(ii) requires the owner or operator to perform cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance and to re-monitor the location within ten (10) calendar days of detecting the exceedance.

36. Pursuant to 40 C.F.R. § 63.4(a), no “owner or operator” shall operate any “affected source” in violation of an applicable NESHAP, except under an extension of compliance or exemption from compliance as provided in that section or in CAA Section 112(i)(4), 42 U.S.C. § 7412(i)(4).

37. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes the Administrator to issue an administrative order against any person assessing a civil penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 112, and the implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$55,808 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 6, 2023.

38. Section 113(d)(2)(B) of the CAA, 42 U.S.C. § 7413(d)(2)(B), states that the Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

#### **IV. EPA’s FACTUAL ALLEGATIONS**

39. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

40. Respondent is the owner and/or operator of the Hamm Sanitary Landfill, a municipal solid waste landfill located at 16984 3<sup>rd</sup> Street, Lawrence, Kansas (Respondent’s Facility) within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5).

41. Respondent’s Facility is a “stationary source” as that term is defined in Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3), 7412(a)(3).

42. Respondent operates a disposal facility in a contiguous space where household waste was placed in or on the land, and is, therefore, a “municipal solid waste landfill” as defined by 40 C.F.R. § 62.16730.

43. At all times relevant to the violations alleged herein, Respondent's Facility had a design capacity equal to or greater than 2.5 million megagrams of waste and 2.5 million cubic meters.

44. Respondent is subject 40 C.F.R. Part 62, Subpart OOO because it owns or operates a MSW landfill that commenced construction, reconstruction or modification on or before July 17, 2014 and has not been modified or reconstructed since that date.

45. Respondent's Facility is subject to the NESAHPs at 40 C.F.R. Part 63, Subpart AAAA.

46. At all times relevant to the violations alleged herein, Respondent's Facility had a NMOC emission rate equal to or greater than 50 megagrams per year.

47. Respondent's Facility began operating a gas collection and control system in 2017.

48. On March 29, 2022, a duly authorized representative from EPA Region 7 conducted a full compliance inspection at Respondent's facility.

49. During the inspection, surface emissions monitoring was conducted using a toxic vapor analyzer. The surface emissions monitoring found seven areas of the landfill where methane emissions exceeded 500 parts ppm. Pursuant to 40 C.F.R. § 62.16720(c)(4)(ii) and 40 C.F.R. § 63.1960(c)(4)(ii) corrective action to increase the gas collection in the vicinity of the exceedance must be taken within 10 (ten) days of detecting the exceedance.

50. On April 10, 2023, the EPA issued a Finding of Violation to Respondent for violations of 40 C.F.R. Part 62, Subpart OOO and Part 63, Subpart AAAA.

## **V. ALLEGED VIOLATIONS OF LAW**

51. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

### **Count 1**

#### **Failure to Take Corrective Action Within Ten (10) Days of Detection of a Methane Exceedance**

52. The facts stated in Paragraphs 39 through 50 above are herein incorporated.

53. 40 C.F.R. § 62.16720(c)(4)(ii) and 40 C.F.R. § 63.1960(c)(4)(ii) require the owner or operator to perform cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each methane exceedance and to re-monitor the location within ten (10) calendar days of detecting the exceedance.

54. During EPA's inspection, the inspector conducted surface emissions monitoring and detected seven instances of methane exceedances.

55. Respondent did not perform cover maintenance or adjustments to the vacuum of adjacent wells in the vicinity of the detected exceedances and re-monitor the locations of the exceedances within ten (10) calendar days.

56. Respondent's failure to take corrective action and timely re-monitor is a violation of the applicable NSPS, pursuant to Section 111(e) of the CAA, 42 U.S.C. § 7411(e), and the applicable NESHAP, pursuant to 40 C.F.R. § 63.4(a), and therefore are violations of Sections 111 and 112 of CAA, 42 U.S.C. §§ 7411, 7412.

## VI. TERMS OF CONSENT AGREEMENT

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

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

58. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein and to completion of the SEP described below.

59. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

60. The parties consent to service of this Consent Agreement and Final Order electronically at the following e-mail addresses: *palumbo.antonette@epa.gov* (for Complainant) and *Charlie.sedlock@summit-materials.com* (for Respondent). Respondent understands that the Consent Agreement and Final Order will become publicly available upon filing.

### **Penalty Payment**

61. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of four thousand two hundred six dollars (\$4,206), as set forth below, and shall perform a Supplemental Environmental Project (SEP) as set forth in this Consent Agreement and Final Order. The projected cost of the SEP is thirty thousand dollars (\$30,000). The SEP is further described below.

62. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979078  
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

63. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
[R7\\_Hearing\\_Clerk\\_Filings@epa.gov](mailto:R7_Hearing_Clerk_Filings@epa.gov); and

Antonette Palumbo, Attorney  
[palumbo.antonette@epa.gov](mailto:palumbo.antonette@epa.gov).

64. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

### **Supplemental Environmental Project**

65. In response to the violations of the CAA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by the CAA or any other federal, state, or local law, Respondent agrees to implement the supplemental environmental



projects (SEPs) described in this Consent Agreement and Final Order, which the parties agree are intended to secure significant environmental or public health protection and improvement.

66. Respondent shall implement the following SEPs: 1) A SnifferDRONE Emissions Investigation that will be completed at the same time as a routine surface emission monitoring event, described below; and 2) A state-of-the-art cover integrity monitoring program using laser imaging, detection, and ranging (LiDAR), described below.

a. SnifferDRONE Emissions Investigation

1. The SnifferDRONE Emissions Investigation shall entail a drone flying over the landfill in a serpentine pattern at 15-meter spacings.
2. The SnifferDRONE investigation shall take place during a routine quarterly surface emission monitoring event, and the results of the SnifferDRONE investigation will be compared to the routine quarterly surface emission monitoring event. Respondent shall prepare a map showing the interpolated methane data from the SnifferDRONE investigation.
3. Respondent shall increase the vacuum for any surface penetrations for gas wells recorded during the quarterly monitoring event. For any instances in which increasing the vacuum does not reduce methane emissions, or the penetration is not connected to the gas collection and control system, Respondent shall install a HDPE geomembrane boot at the penetration.
4. Respondent shall perform the SnifferDRONE emission investigation and the quarterly routine monitoring event concurrently between November 1–30, 2023. Other milestones associated with the SnifferDRONE monitoring shall occur as follows:

<b>SEP Milestone</b>	<b>Milestone Date</b>
Cover maintenance or adjustments to the vacuum of adjacent wells as set forth in 40 C.F.R. § 63.1960(c)(4)(ii).	Within ten (10) calendar days of the investigation
Ten (10)-Day Follow Up Monitoring	After the completion of corrective measures as set forth in 40 C.F.R. § 63.1960(c)(4)(ii) and within ten (10) calendar days of the investigation
One (1)-Month Follow Up Monitoring	By the end of the calendar month following the investigation
Installation of HDPE Geomembrane Boot on Non-Compliant Surface Penetrations	Within 60 calendar days of investigation (pending product availability)
Submission of Periodic Report	On or before February 16, 2024

Submission of SEP Completion Report for Investigation and Cover Integrity Monitoring	On or before August 15, 2024
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5. Respondent shall submit a periodic report to EPA by February 16, 2024, that details the date(s) of the routine quarterly monitoring event and SnifferDRONE investigation and describes any ten (10)-day or one (1)-month follow up monitoring that was performed.
  6. As part of the SEP Completion Report referenced in Paragraph 73 below, Respondent shall provide a comparison of the efficacy of the SnifferDRONE investigation against the current Method 21 surface emission monitoring. The report shall discuss any follow up monitoring and corrective actions made to the landfill cover or surface penetrations identified during the investigation and if the landfill cover or surface penetrations were monitored during future quarterly surface emission monitoring events.
- b. Cover Integrity Monitoring Through LiDAR System
1. Respondent shall install no less than five LiDAR stations around the perimeter of the landfill in locations that will allow for optimal scanning precision.
  2. Respondent shall utilize the LiDAR system to monitor the integrity of the landfill cover on a daily basis and identify areas potentially needing inspection or improvement.
  3. The LiDAR scanning shall provide high-definition topographic survey data at a precision of one (1) to two (2) inches that will be utilized to evaluate the landfill cap and intermediate cover soils for potential erosion issues, loss of cap thickness locations, or other areas of significant elevation change over short time frames.
  4. Respondent shall develop a cover integrity analysis from the daily topographic data and utilize this analysis to address any areas of concern in the intermediate and final cover system at the Facility prior to routine surface emission monitoring each quarter.
  5. Respondent shall commence LiDAR cover integrity monitoring between November 1, 2023, and continue through June 30, 2024.
  6. Respondent shall prepare quarterly reports detailing the results of the LiDAR cover integrity monitoring, any follow up inspections undertaken based upon the monitoring, and any corrective actions undertaken.

7. Respondent shall submit a periodic report to EPA by February 16, 2024, that details the results of the LiDAR cover integrity monitoring, any follow up inspections undertaken based upon the monitoring, and any corrective actions undertaken to that date.
8. As part of the SEP Completion Report referenced in Paragraph 73 below, Respondent shall address the LiDAR cover integrity monitoring results, including a comparison of the areas of concern identified by the LiDAR monitoring and the exceedance locations identified during quarterly surface emission monitoring events. This comparison should also include a discussion of the efficacy of the LiDAR cover system monitoring.

67. Respondent shall spend no less than Thirty Thousand Dollars (\$30,000) on implementing the SEPs. Respondent shall include documentation of the expenditures made in connect with the SEPs as part of the SEP Completion Report. If Respondent's implementation of the SEPs as described above does not expend the full amount set forth in this paragraph, and if EPA determines that amount remaining reasonably could be applied toward additional SnifferDRONE monitoring or LiDAR monitoring, Respondent will perform an additional SnifferDRONE monitoring during a subsequent quarterly surface emission monitoring event or additional LiDAR cover integrity monitoring.

68. Respondent agrees that the SEPs shall be implemented within ten (10) months of the Effective Date of this Consent Agreement and Final Order.

69. Respondent has selected Burns & McDonnell Engineering Company, Inc., and Blackstone Environmental Inc, as consultants, and Sniffer Robotics as contractor to assist with implementation of the SEPs.

70. The SEPs are consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015). The SEPs advance at least one of the objectives of the CAA through the reduction of methane and non-methane organic compounds utilizing new technologies. The SEP is not inconsistent with any provision of the CAA. The SEP relates to the alleged violations and is designed to reduce the adverse impact and overall risk to the environment and public health to which the alleged violations contribute by allowing Respondent to monitor areas of the Facility that ordinarily cannot be safely accessed and providing Respondent with more precise information about the integrity of the Facility's cover system.

71. Respondent certifies the truth and accuracy of each of the following:
  - a. That all cost information provided to the EPA in connection with the EPA's approval of the SEPs is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEPs, is \$30,000;
  - b. That, as of the date of executing this Order, Respondent is not required to perform or develop the SEPs by any federal, state, or local law or regulation and is not

required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- c. That the SEPs are not projects that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Order;
- d. That Respondent has not received and will not receive any credit for the SEPs in any other enforcement action;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEPs described in Paragraph 66.

72. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEPs under this Order from the date of its execution shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the federal laws.”

73. SEP Reports.

- a. Respondent shall submit a SEP Completion Report to EPA by August 15, 2024. In addition to the information detailed in Paragraph 66 above, the SEP Completion Report shall contain the following information, with supporting documentation:
  1. a detailed description of the SEPs as implemented;
  2. a description of any operating problems encountered in implementation of the projects and the solution thereto;
  3. itemized costs;
  4. Certification that the SEPs have been fully implemented pursuant to the provisions of this Order; and

5. a description of the environmental and public health benefits resulting from implementation of the SEPs (with a quantification of the benefits and pollutant reductions, if feasible).
  - b. Periodic Reports. Respondent shall submit additional reports as required by Paragraph 66 to EPA in accordance with the schedule and requirements recited therein.
  - c. Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report required by subsections (a) and (b) above shall be deemed a violation of this Order and Respondent shall become liable for stipulated penalties pursuant to Paragraph 75 below.
  - d. Respondent shall submit all notices and reports required by this Order to Joe Terriquez, *terriquez.joe@epa.gov*.
  - e. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
74. EPA Acceptance of SEP Completion Report.
- a. After receipt of the SEP Completion Report described in Paragraph 73.a above, EPA will, in writing to the Respondent, either:
    - i. identify any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
    - ii. indicate that EPA concludes that the projects have been completed satisfactorily; or
    - iii. determine that the projects have not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 75 herein.
  - b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of the SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this Paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional

thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEPs to Respondent, which decision shall be final and binding upon Respondent.

75. Stipulated penalties.

- a. Except as provided in subparagraphs (b) and (c) below, if Respondent fails to satisfactorily complete the requirements regarding the SEPs specified this Section by the deadline in Paragraph 68, Respondent agrees to pay (unless waived by Complainant), in addition to the civil penalty in Paragraph 61, the following per day per violation stipulated penalty for each day Respondent is late meeting the applicable SEP requirement:
  - i. Two Hundred Fifty Dollars (\$250) for each day from the first to the fifteenth day;
  - ii. Five Hundred Dollars (\$500) for each day from the sixteenth to the thirtieth day; and
  - iii. Seven Hundred Fifty Dollars (\$750) for each day thereafter that the failure continues.
- b. If Respondent fails to timely submit any SEP reports, such as those referred to in Paragraphs 66 and 73, in accordance with the timelines set forth in this Order, Respondent agrees to the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:
  - i. One Hundred Dollars (\$100) for each day from the first to the fifteenth day;
  - ii. One Hundred Fifty Dollars (\$150) for each day from the sixteenth to the thirtieth day; and
  - iii. Two Hundred Dollars (\$200) for each day thereafter that the failure continues.
- c. If Respondent does not satisfactorily complete the SEPs, including spending the minimum amount on the SEPs set forth in Paragraph 67 above, Respondent shall pay a stipulated penalty to the United States in the amount of Thirty-five Thousand Dollars (\$35,000). “Satisfactory completion” of the SEPs is defined as Respondent spending no less than Thirty Thousand Dollars (\$30,000) to perform the SnifferDRONE Emissions Investigation at the same time as a routine surface emission monitoring event and the LiDAR cover integrity monitoring program, as outlined in Paragraph 66, within ten (10) months of the effective date of this

Order. The determinations of whether the SEPs have been satisfactorily completed shall be in the sole discretion of EPA.

- d. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.
- e. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of the Penalty Payment section above. Interest and late charges shall be paid as stated in Paragraph 64 herein.

### **Effect of Settlement and Reservation of Rights**

76. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

77. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in the paragraph directly below.

78. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations.

79. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

80. This Consent Agreement and Final Order constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

81. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

### **General Provisions**

82. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and have the legal capacity to bind the party they represent to this Consent Agreement.

83. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent

Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

84. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

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



**RESPONDENT:  
HAMM, INC.**

*Charlie M. Sedlock*

Signature

*10.16.23*

Date

*Charlie M. Sedlock*

Printed Name

*Vice President*

Title

**COMPLAINANT:**  
**U.S. ENVIRONMENTAL PROTECTION AGENCY**

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David Cozad  
Director  
Enforcement and Compliance Assurance Division

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Date

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Antonette Palumbo  
Assistant Regional Counsel

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Date

**FINAL ORDER**

Pursuant to Section 113(d) of the CAA, 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**  
*(to be completed by EPA)*

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

Copy via E-mail to Complainant:

Antonette Palumbo  
Office of Regional Counsel  
*palumbo.antonette@epa.gov*

Milady Peters  
Office of Regional Counsel  
*peters.milady@epa.gov*

Copy via E-mail to Respondent:

Philip Comella  
Taft Law  
*pcomella@taftlaw.com*

Charlie Sedlock  
Sumit Materials  
*Charlie.Sedlock@summit-materials.com*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Regional Hearing Clerk