



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

DEC 28 2016

REPLY TO THE ATTENTION OF:

**VIA E-MAIL**  
**RETURN RECEIPT REQUESTED**

Mike DeJong, President  
Welsch Ready Mix, Inc.  
4243 West 166<sup>th</sup> Street  
Oak Forest, Illinois 60452  
Email: mdejong@welschrm.com

Dear Mr. DeJong:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Welsch Ready Mix, Inc., docket no. CAA-05-2017-0006. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on December 28, 2016.

Pursuant to paragraph 30 of the CAFO, Welsch Ready Mix, Inc. must pay the civil penalty within 30 days of January 27, 2016. Your check must display the case name and case, docket number.

Please direct any questions regarding this case to Josh Zaharoff, Assistant Regional Counsel, 312-886-4460.

Sincerely,



Nathan Frank, Chief  
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Josh Zaharoff/C-14J  
Illinois EPA via e-mail: Yasmine.Keppner-Bauman@illinois.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of: ) Docket No. CAA-05-2017-0006  
)  
Welsch Ready Mix, Inc. )  
Chicago, Illinois ) Proceeding to Assess a Civil Penalty  
) Under Section 113(d) of the Clean Air Act,  
) 42 U.S.C. § 7413(d)  
Respondent. )  
\_\_\_\_\_ )

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) 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 Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Welsch Ready Mix, Inc., an Illinois corporation doing business in Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. On July 14, 1999, EPA approved 35 Illinois (Ill.) Administrative (Admin.) Code Part 212 (Visible and Particulate Matter Emissions), Subpart K (Fugitive Particulate Matter), and Section 212.302 (Geographical Areas of Application) as part of the federally enforceable State Implementation Plan (SIP) for Illinois. 64 Fed. Reg. 37847.

10. 35 Ill. Admin. Code § 212.302 states that Sections 212.304 through 212.310 and 212.312 of Subpart K shall apply to, among other things, manufacturing operations (except certain grain handling operations) located in Cook County, Illinois.

11. On February 21, 1980, EPA approved Illinois Pollution Control Board (IPCB) Rule 203(f)(3)(C) [now 35 Ill. Admin. Code § 212.306 (Traffic Areas)] as part of the federally enforceable SIP for Illinois. 45 Fed. Reg. 11472.

12. 35 Ill. Admin. Code § 212.306 requires, among other things, that all normal traffic pattern roads and parking facilities which are located on manufacturing property shall be paved or treated with water, oils or chemical dust suppressants. All paved areas shall be cleaned on a regular basis. All areas treated with water, oils, or chemical dust suppressants shall have the treatment applied on a regular basis, as needed, in accordance with the operating program required by 35 Ill. Admin. Code §§ 212.309 and 212.310.

13. On July 14, 1999, EPA approved 35 Ill. Admin. Code § 212.309 (Operating Program) as part of the federally enforceable SIP for Illinois. 64 Fed. Reg. 37847.

14. 35 Ill. Admin. Code § 212.309 requires that the emission units described in Sections 212.304 through 212.308 and Section 212.316 of Subpart K be operated under the provisions of an operating program consistent with the requirements set forth in Sections 212.310 and 212.312 of Subpart K, and prepared by the owner or operator and submitted to the Illinois Environmental Protection Agency (IEPA) for review. Such operating program shall be designed to significantly reduce fugitive particulate matter emissions.

15. On February 21, 1980, EPA approved IPCB Rule 203(f)(3)(F) [now 35 Ill. Admin. Code § 212.310 (Minimum Operating Program)] as part of the federally enforceable SIP for Illinois. 45 Fed. Reg. 11472.

16. 35 Ill. Admin. Code § 212.310 requires that an operating program include certain specific information, such as a detailed description of the best management practices utilized to achieve compliance, including an engineering specification of particulate collection equipment, application systems for water, oil chemicals and dust suppressants utilized and equivalent methods utilized.

17. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day for each violation up to a total of \$295,000 for CAA violations that occurred between January 13, 2009 and December 6, 2013, \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015, and \$44,539 per day of violation up to a total of \$356,312 for CAA violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

18. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United

States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

19. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

**EPA's Factual Allegations and Alleged Violations**

20. Welsch owns and operates a ready mix concrete batch plant at 2330 South Morgan Street, Chicago, Illinois (the Facility).

21. Emissions from the traffic areas at the Facility are subject to the fugitive particulate matter regulations in the Illinois SIP at IPCB Rule 203(f)(3)(C) and (F) and 35 Ill. Admin. Code §§ 212.302, 212.306, 212.309, and 212.310.

22. On August 14, 2013, in response to a complaint from a nearby business, an EPA inspector inspected the Facility. During the inspection, the inspector observed the following:

- a. Welsch could not produce a fugitive particulate matter operating program (fugitive dust plan);
- b. Welsch vehicles driving on Facility property were generating fugitive particulate matter;
- c. Welsch vehicles leaving the Facility and driving on Morgan Street were generating fugitive particulate matter; and
- d. Significant amounts of rocks and stones were present on the paved areas of the Facility.

23. In accordance with Section 113(a) of the CAA, 42 U.S.C. § 7412(a), on May 23, 2014, EPA issued to Welsch a Notice of Violation (NOV) alleging violations of the Illinois SIP at 35 Ill. Admin. Code §§ 212.306, 212.309, and 212.310.

24. On July 18, 2014, in response to a citizen complaint, an EPA inspector again inspected the Facility. During the inspection, the EPA inspector observed the following:

- a. Welsch could not produce a fugitive dust plan;

- b. Welsch vehicles leaving the Facility and driving on Morgan Street were generating fugitive particulate matter; and
- c. Significant amounts of rocks and stones were present on the paved areas of the Facility.

25. On August 13, 2014, representatives of Welsch and EPA met to discuss the allegations in the NOV.

26. On October 3, 2014, Welsch submitted a draft fugitive dust plan to EPA for review. On November 18, 2014, EPA requested changes to the fugitive dust plan. On February 23, 2015, Welsch submitted an updated fugitive dust plan, dated February 18, 2015. On April 6, 2016, EPA requested changes to the February 18, 2015 fugitive dust plan. On June 7, 2016, Welsch submitted an updated fugitive dust plan, dated May 17, 2016. (May 17, 2016 fugitive dust plan).

27. On December 7, 2015, in response to an EPA inspector observing particulate matter emissions from the Facility while nearby the Facility, EPA again inspected the Facility. During the inspection, EPA observed the following:

- a. Welsch was not in possession of or aware of the February 18, 2015 fugitive dust plan or any other fugitive dust plan;
- b. Welsch was not keeping the records required by the February 18, 2015 fugitive dust plan; and
- c. Significant amounts of rocks and stones were present on the paved areas of the Facility.

28. Welsch violated the Illinois SIP at 35 Ill. Admin. Code §§ 212.306, 212.309, and 212.310.

**Civil Penalty**

29. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation, and Respondent's agreement to perform a Supplemental Environmental Project, Complainant has determined that an appropriate civil penalty to settle this action is \$ 20,000.00.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$ 20,000.00 civil penalty by check. For checks sent by regular U.S. Postal Service mail, send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O.

Boxes), send a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note Respondent's name and the docket number of this CAFO.

31. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Josh Zaharoff (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

32. This civil penalty is not deductible for federal tax purposes.

33. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

34. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

#### **Supplemental Environmental Project**

35. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment by reducing the amount of emissions of particulate matter to the air.



36. At its facility located at 2330 South Morgan Street, Chicago, Illinois, Respondent must complete the SEP as follows: Respondent must install a water sprinkler system to water all of its stone, sand, and aggregate piles at the facility. The water sprinkler system shall consist of five water spray heads, irrigation control valves, a controller, an irrigation main line, a pump, and backflow preventer. Respondent must complete this SEP no later than March 30, 2017.

37. Respondent must spend at least \$ 16,799.00 to purchase the equipment and install the water sprinkler system.

38. Respondent must operate the sprinkler system whenever any visible dust is observed coming from the stone and aggregate piles, and no less than two times per week when the facility is operating, for a period of at least five (5) years following its installation.

39. Respondent must revise its most recent fugitive dust plan to incorporate the use of the sprinkler system on its stone, sand and aggregate piles.

40. Respondent certifies as follows:

I certify that Welsch Ready Mix, Inc. is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Welsch Ready Mix Inc. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Welsch Ready Mix, Inc. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

41. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

42. Respondent must submit a SEP completion report to EPA by May 31, 2017. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

43. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 31, above.

44. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

45. Following receipt of the SEP completion report described in paragraph 42, above, EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. Respondent has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 47.

46. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 47, below.

47. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 36, Respondent must pay a penalty of \$ 20,000.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 37, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 37, Respondent must pay a penalty of \$ 3,850.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

| <u>Penalty per violation per day</u> | <u>Period of violation</u>                    |
|--------------------------------------|---|
| \$ 500.00                            | 1 <sup>st</sup> through 14 <sup>th</sup> day  |
| \$ 1,000.00                          | 15 <sup>th</sup> through 30 <sup>th</sup> day |
| \$ 1,500.00                          | 31 <sup>st</sup> day and beyond               |

48. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

49. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 30, above, and will pay interest and nonpayment penalties on any overdue amounts.

50. Any public statement that Respondent makes referring to the SEP must include the following language: "Welsch Ready Mix, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Welsch Ready Mix, Inc. for violations of the fugitive particulate matter provisions of the Illinois SIP."

51. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

#### **General Provisions**

52. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: zaharoff.josh@epa.gov (for Complainant), mdejong@welschrm.com (for Respondent), and Thor.Ketzback@bryancave.com (attorney for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

53. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

54. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

55. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 53, above,

compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

56. Respondent has signed the accompanying Administrative Consent Order, Docket No. EPA-5-17-113(a)-IL-02, in which Respondent has agreed to take specific actions in order to achieve and maintain compliance with the CAA and its implementing regulations.

57. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

58. The terms of this CAFO bind Respondent, its successors and assigns.

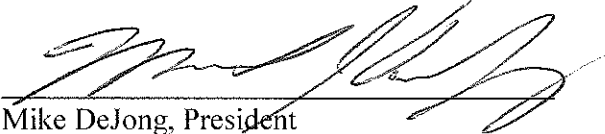
59. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

60. Each party agrees to bear its own costs and attorneys’ fees in this action.

61. This CAFO constitutes the entire agreement between the parties.

**Welsch Ready Mix, Inc., Respondent**

12/15/14  
Date

  
Mike DeJong, President  
Welsch Ready Mix, Inc.

**United States Environmental Protection Agency, Complainant**

12/23/14  
Date

*Sara Brenner*  
for Edward Nam  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

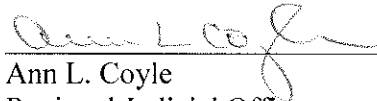
**Consent Agreement and Final Order**  
**In the Matter of: Welsch Ready Mix, Inc.**  
**Docket No. CAA-05-2017-0006**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

December 23, 2016

Date



Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5



Consent Agreement and Final Order  
In the Matter of: Welsch Ready Mix, Inc.  
Docket Number: **CAA-05-2017-0006**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2017-0006, which was filed on December 28, 2016 in the following manner to the addressees:

Copy by E-mail to  
Respondent:

Mike DeJong, President  
Welsch Ready Mix, Inc.  
[mdejong@welschrm.com](mailto:mdejong@welschrm.com)

Copy by E-mail to  
Attorney for Respondent:

Thor Ketzback  
[Thor.Ketzback@bryancave.com](mailto:Thor.Ketzback@bryancave.com)

Copy by E-mail to  
Attorney for Complainant:

Josh Zaharoff  
[zaharoff.josh@epa.gov](mailto:zaharoff.josh@epa.gov)

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated:

December 28, 2016



LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5