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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
REGION IX
9

10 In the matter of:

Docket No. EPCRA-9-2007-0008

11
12 Las Vegas Paving Corporation,

CONSENT AGREEMENT
AND FINAL ORDER
pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

13 Respondent.
14

15 I. CONSENT AGREEMENT
16

17 The United States Environmental Protection Agency, Region IX ("EPA"), and Las Vegas
18 Paving Corporation (the "Respondent") agree to settle this matter and consent to the entry of this
19 Consent Agreement and Final Order ("CAFO").

20 A. AUTHORITY AND PARTIES

21 1. This is a civil administrative action brought under Section 325(c) of the Emergency
22 Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for
23 assessment of a civil administrative penalty against Respondent for its failure to submit timely,
24 complete and correct Toxic Chemical Release Inventory Forms for calendar years 2003 and 2004
25 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing regulations set
26 forth at 40 C.F.R. Part 372.

27 2. Complainant is the Director of the Communities and Ecosystems Division in EPA,
28 Region IX (the "Complainant"). Pursuant to EPA Delegation Order Number 22-3-A, dated May
11, 1994, the Administrator of EPA has delegated the authority to file this action under EPCRA

1 to the Regional Administrator of EPA, Region IX, and pursuant to EPA Regional Order Number
2 R1260.14B, dated May 19, 2005, the Regional Administrator re-delegated that authority to
3 Complainant.

4 B. STATUTORY AND REGULATORY BASIS

5 3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA
6 promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for
7 the submission of information relating to the release of toxic chemicals under EPCRA Section
8 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.

9 4. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.
10 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and
11 the State in which the facility is located a chemical release form published under Section 313(g)
12 of EPCRA for each toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R.
13 § 372.65 that it manufactured, processed or otherwise used if: (i) the facility has ten or more full-
14 time employees; (ii) the facility is in Standard Industrial Classification Code 2951; and (iii) the
15 facility manufactured, processed or otherwise used during the calendar year the listed toxic
16 chemical in excess of the threshold quantity established under Section 313(f) of EPCRA and 40
17 C.F.R. § 372.25.

18 5. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a
19 uniform Toxic Chemical Release Inventory Form (hereinafter referred to as a "Form R") for
20 facilities that are subject to the reporting requirements of Section 313. Sections 313(a) and (b) of
21 EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for
22 activities involving a toxic chemical that occurred during a calendar year must be submitted on or
23 before July 1 of the next year.

24 C. ALLEGED VIOLATIONS

25 6. Respondent is a corporation and therefore fits within the definition of a "person," as
26 provided in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

27 7. At all times relevant to this matter, Respondent owned and operated a facility (the
28 "Lone Mountain Facility") in the business of aggregate materials mining and processing and

1 asphaltic concrete manufacturing, located approximately one mile west of the intersection of I-
2 215 and Lone Mountain Road near Las Vegas, Nevada, that fits within the definition of a
3 “facility,” as provided in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

4 8. At all times relevant to this matter, the Lone Mountain Facility had 10 or more “full-
5 time employees,” as that term is defined at 40 C.F.R. § 372.3.

6 9. At all times relevant to this matter, the asphaltic concrete manufacturing establishment
7 at the Lone Mountain Facility was in Standard Industrial Classification Code 2951.

8 10. During the calendar year 2003, Respondent “manufactured, processed, and otherwise
9 used,” as those terms are defined in 40 C.F.R. § 372.3, approximately 27 pounds of
10 benzo[g,h,i]perylene, a toxic chemical listed under 40 C.F.R. § 372.65. This quantity exceeded
11 the 10 pound threshold for reporting “manufacturing, processing, and otherwise using” that
12 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
13 § 372.28.

14 11. During the calendar year 2003, Respondent “manufactured, processed, and otherwise
15 used,” as those terms are defined in 40 C.F.R. § 372.3, approximately 661 pounds of polycyclic
16 aromatic compounds, a toxic chemical category listed under 40 C.F.R. § 372.65. This quantity
17 exceeded the 100 pound threshold for reporting “manufacturing, processing, and otherwise
18 using” that chemical category established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f),
19 and 40 C.F.R. § 372.28.

20 12. During the calendar year 2004, Respondent “manufactured, processed, and otherwise
21 used,” as those terms are defined in 40 C.F.R. § 372.3, approximately 29 pounds of
22 benzo[g,h,i]perylene, a toxic chemical listed under 40 C.F.R. § 372.65. This quantity exceeded
23 the 10 pound threshold for reporting “manufacturing, processing, and otherwise using” that
24 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
25 § 372.28.

26 13. During the calendar year 2004, Respondent “manufactured, processed, and otherwise
27 used,” as those terms are defined in 40 C.F.R. § 372.3, approximately 723 pounds of polycyclic
28 aromatic compounds, a toxic chemical category listed under 40 C.F.R. § 372.65. This quantity

1 exceeded the 100 pound threshold for reporting "manufacturing, processing, and otherwise
2 using" that chemical category established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f),
3 and 40 C.F.R. § 372.28.

4 14. Respondent was required to submit Form Rs for benzo[g,h,i]perylene and polycyclic
5 aromatic compounds to EPA and the State of Nevada for calendar year 2003 on or before July 1,
6 2004.

7 15. Respondent was required to submit Form Rs for benzo[g,h,i]perylene and polycyclic
8 aromatic compounds to EPA and the State of Nevada for calendar year 2004 on or before July 1,
9 2005.

10 16. Respondent failed to timely submit the Form Rs required of it to EPA and the State
11 of Nevada for calendar years 2003 and 2004, and thus violated Section 313 of EPCRA, 42 U.S.C.
12 § 11023, and 40 C.F.R. Part 372.

13 17. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty
14 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any
15 requirement of Section 313 shall be liable to the United States for a civil penalty in an amount
16 not to exceed \$32,500 for each such violation that occurred on or after March 15, 2004. Under
17 the Enforcement Response Policy for Section 313 of EPCRA, dated August 10, 1992, and the
18 Civil Monetary Penalty Inflation Adjustment Rule, the violations cited above would merit a total
19 gravity-based civil penalty of TWENTY-FIVE THOUSAND AND EIGHT HUNDRED
20 DOLLARS (\$25,800), given the nature, circumstances, and extent of the violations alleged.

21 D. RESPONDENT'S ADMISSIONS

22 18. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
23 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
24 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Sections
25 I.A.1 and I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to
26 the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives
27 any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
28 proposed Final Order contained in this CAFO.

1 E. CIVIL ADMINISTRATIVE PENALTY

2 19. In settlement of the violations specifically alleged in Sections I.A.1 and I.C of this
3 CAFO, Respondent shall pay a civil administrative penalty of EIGHTEEN THOUSAND AND
4 SIXTY DOLLARS (\$18,060). Respondent shall pay this civil penalty within thirty (30) days of
5 the effective date of this CAFO, shall make this payment by cashier's or certified check payable
6 to the "Treasurer, United States of America," and shall send the check by certified mail, return
7 receipt requested, to the following address:

8 U.S. Environmental Protection Agency, Region IX
9 P.O. Box 371099M
10 Pittsburgh, PA 15251

11 Respondent shall accompany its payment with a transmittal letter identifying the case name, the
12 case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty,
13 Respondent shall send a copy of the check and transmittal letter to the following addresses:

14 Regional Hearing Clerk
15 Office of Regional Counsel (ORC-1)
16 U.S. Environmental Protection Agency, Region IX
17 75 Hawthorne Street
18 San Francisco, CA 94105

19 Russell Frazer
20 Communities and Ecosystems Division (CED-4)
21 U.S. Environmental Protection Agency, Region IX
22 75 Hawthorne Street
23 San Francisco, CA 94105

24 Edgar Coral
25 Office of Regional Counsel (ORC-2)
26 U.S. Environmental Protection Agency, Region IX
27 75 Hawthorne Street
28 San Francisco, CA 94105

29 20. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
30 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
31 use such payment as a tax deduction.

32 21. If Respondent fails to pay the assessed civil administrative penalty of EIGHTEEN
33 THOUSAND AND SIXTY DOLLARS (\$18,060), as identified in Paragraph 19, by the deadline
34 specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA. The

1 amount of the stipulated penalty will be SEVEN THOUSAND, SEVEN HUNDRED, AND
2 FORTY DOLLARS (\$7,740), and will be immediately due and payable on the day following the
3 deadline specified in Paragraph 19, together with the initially assessed civil administrative
4 penalty of EIGHTEEN THOUSAND AND SIXTY DOLLARS (\$18,060), resulting in a total
5 penalty due of TWENTY-FIVE THOUSAND AND EIGHT HUNDRED DOLLARS (\$25,800).
6 Failure to pay the civil administrative penalty specified in Paragraph 19 by the deadline specified
7 in that Paragraph may also lead to any or all of the following actions:

8 (1) EPA may refer the debt to a credit reporting agency, a collection
9 agency, or to the Department of Justice for filing of a collection action in the appropriate United
10 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
11 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
12 collection proceeding.

13 (2) The U.S. Government may collect the debt by administrative offset
14 (i.e., the withholding of money payable by the United States to, or held by the United States for, a
15 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
16 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
17 C.F.R. §§ 13(C) and 13(H).

18 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
19 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
20 business with EPA or engaging in programs EPA sponsors or funds.

21 (4) Pursuant to 31 U.S.C. § 3701 et seq. and 40 C.F.R. Part 13, the U.S.
22 Government may assess interest, administrative handling charges, and nonpayment penalties
23 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
24 civil administrative penalty specified in Paragraph 19 by the deadline specified in that Paragraph.

25 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
26 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
27 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
28 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty

1 (30) days of the effective date of this CAFO.

2 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
3 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
4 based on either actual or average cost incurred (including both direct and indirect costs), for
5 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

6 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
7 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
8 may be assessed on all debts more than ninety (90) days delinquent.

9 F. CERTIFICATION OF COMPLIANCE

10 22. In executing this CAFO, Respondent certifies that (1) it has now fully completed and
11 submitted to EPA all of the required Toxic Chemical Release Inventory Forms in compliance
12 with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder;
13 and (2) it has complied with all other EPCRA requirements at all facilities under its control.

14 G. RETENTION OF RIGHTS

15 23. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
16 liabilities for federal civil penalties for the violations and facts specifically alleged in Sections
17 I.A.1 and I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to
18 resolve: (i) any civil liability for violations of any provision of any federal, state, or local law,
19 statute, regulation, rule, ordinance, or permit not specifically alleged in Sections I.A.1 and I.C of
20 this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights,
21 and remedies available to it (including, but not limited to, injunctive or other equitable relief or
22 criminal sanctions) to address any violation of this CAFO or any violation not specifically
23 alleged in Sections I.A.1 and I.C of this CAFO.

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

H. ATTORNEYS' FEES AND COSTS

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

I. EFFECTIVE DATE

26. 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.

J. BINDING EFFECT

27. 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.

28. 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 RESPONDENT LAS VEGAS PAVING CORPORATION:

5-15-07
DATE


ROBERT L. MENDENHALL
Chief Executive Officer
Las Vegas Paving Corporation
4420 South Decatur Blvd.
Las Vegas, NV 89103

FOR COMPLAINANT EPA:

7/12/07
DATE


ENRIQUE MANZANILLA
Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order ("CAFO"),
Docket Number EPCRA-09-2007- 0008, was filed this day with the Regional Hearing Clerk, U.S.
EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, and that a true and
correct copy of the CAFO was sent to Respondent at the following address:

Mr. Robert L. Mendenhall
CEO
Las Vegas Paving Corporation
4420 South Decatur Blvd.
Las Vegas, NV 89103

Certified Mail No: 7005 3110 0002 8247 1803

Danielle E. Carr

Danielle Carr
Regional Hearing Clerk
Region IX, EPA
Office of Regional Counsel

7-17-07
Date