

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for Greg Dain
Name of Case Attorney

9/24/08
Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CAA-01-2008-0068 & EPCRA-01-2008-0069

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Dragon Products Company, LLC

U.S. Route 1

P.O. Box 191

Thomaston, Maine 04861

Total Dollar Amount of Receivable \$ 77,470

Due Date: 10/23/08

SEP due? Yes No

Date Due 10/23/09

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ _____ on _____

2nd \$ _____ on _____

3rd \$ _____ on _____

4th \$ _____ on _____

5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

2008 SEP 24 P 9:31

In the Matter of:)
)
Dragon Products Company, LLC)
U.S. Route 1)
P.O. Box 191)
Thomaston, Maine 04861)
)
Respondent)
)

Docket No. CAA 01-2008-0068
EPCRA 01-2008-0069

EPA
CLERK

CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region 1 ("EPA"), alleges that Dragon Products Company, LLC ("Respondent") violated sections of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401 et seq., the National Emissions Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Facilities ("NESHAP") promulgated under the CAA, and certain requirements of its CAA Title V operating permit. EPA also alleges that Respondent violated Section 313 of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c) (also known as the Emergency Planning and Community Right-to-Know Act of 1986, hereinafter "EPCRA"), 42 U.S.C. § 11023, and the implementing regulations at 40 C.F.R. Part 372 that require submission to EPA of Toxic Chemical Release Inventory Reporting Forms.

EPA and Respondent agree to settlement of this matter through this Consent Agreement and Final Order ("CAFO") without the filing of an administrative complaint, as authorized under 40 CFR § 22.13(b).

EPA and Respondent agree that settlement of this matter is in the public interest, and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

A. PRELIMINARY STATEMENT

1. This is an administrative action for the assessment of monetary penalties and other relief pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), Section 325(c) of EPCRA, 42 U.S.C. § 11025(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. The federal regulations at 40 C.F.R. Part 372 were promulgated by EPA under Section 313 of EPCRA, 42 U.S.C. § 11023, and require facilities subject to those regulations to submit to EPA timely, complete, and correct Toxic Chemical Release Inventory Reporting Forms. Those forms require a facility that manufactures, processes, or otherwise uses chemicals listed under 40 C.F.R. § 372.65 in quantities exceeding established thresholds, to report, among other

things, the activities and uses of the chemical at the facility, the maximum amount of the chemical on site at any point during a reporting year, and information on releases of the chemical to the environment. The reported information is primarily intended to inform the general public and the communities surrounding subject facilities about releases of toxic chemicals, hold companies accountable for such releases, assist research, and aid in the development of regulations, guidelines and emissions standards.

3. Respondent is a limited liability company organized under the laws of the State of Delaware that owns and operates a facility (the "facility") that manufactures portland cement in Thomaston, Maine.

4. Respondent is a "person," as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

5. Respondent is an owner or operator of a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

6. The facility has 10 or more "full-time employees," as that term is defined by 40 C.F.R. §372.3.

7. The facility is classified in Standard Industrial Classification code 3241.

8. During the calendar years 2004 and 2005, Respondent manufactured, processed or otherwise used certain toxic chemicals listed under 40 C.F.R. § 372.65 in quantities exceeding the established thresholds.

9. The requirements of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), therefore apply to Respondent's facility.

10. The NESHAP was promulgated by EPA under Section 112 of the CAA, 42 U.S.C. § 7412, and contains, among other requirements, work practice, record keeping, monitoring and emissions limits applicable to sources that manufacture portland cement.

11. Respondent's CAA Title V operating permit was issued by the State of Maine pursuant to regulations approved by EPA under Title V of the CAA and 40 C.F.R. Part 70, and generally contains all applicable requirements to which Dragon is subject under the CAA.

12. Respondent is a "person," as that term is defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

13. Respondent's facility is a "stationary source," as that term is defined in Sections 302(z) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7602(z) and 7412(a)(3).

14. Respondent owns and operates an existing, reconstructed, or new brownfield portland cement manufacturing facility that is a "major source" of "hazardous air pollutants," as those terms are defined in the NESHAP.

B. VIOLATIONS

EPCRA VIOLATIONS

15. Paragraphs 1 through 9, above, are incorporated by reference as if fully set forth herein.

16. In January 2007, EPA conducted an EPCRA inspection of

Respondent's facility. Based on that inspection and based upon subsequent information submitted by Respondent to EPA, EPA alleges that Respondent violated Section 313 of EPCRA and 40 C.F.R. § 372.65 by failing to submit required Toxic Chemical Release Inventory Forms, as follows:

i) for the calendar year 2004, Respondent failed to submit to EPA by July 1, 2005 Toxic Chemical Release Inventory Forms for lead, nickel, and polycyclic aromatic compounds, which are chemicals listed under 40 C.F.R. § 372.65 and which Respondent manufactured, processed or otherwise used in quantities exceeding the established thresholds; and ii) for the calendar year 2005, Respondent failed to submit to EPA by July 1, 2006 Toxic Chemical Release Inventory Forms for lead, nickel, manganese compounds, nitrate compounds and polycyclic aromatic compounds, which are chemicals listed under 40 C.F.R. § 372.65 and which Respondent manufactured, processed or otherwise used in quantities exceeding the established thresholds.

CAA VIOLATIONS

17. Paragraphs 1, 3, and 10 through 14, above, are incorporated by reference as if fully set forth herein.

18. In August 2006, EPA conducted a CAA inspection of Respondent's facility. Based on that inspection and based upon subsequent information submitted by Respondent to EPA, EPA alleges that it discovered work practice, record keeping, monitoring and emissions violations of the NESHAP and Respondent's Title V operating permit. EPA alleges that the following specific

violations occurred at Respondent's facility:

i) Respondent failed to maintain records showing a sufficient number of visible emission tests for opacity on its pre-grinding and finish mills during the period January 1, 2006 through June 30, 2006, in violation of 40 C.F.R. §63.1350(e) and the corresponding provision of its Title V operating permit; ii) Respondent failed to verify the calibration of the thermocouples on the inlet to its kiln's baghouse during the first and fourth calendar quarters of 2005, in violation of 40 C.F.R. § 63.1350(f)(6) and the corresponding provision of its Title V operating permit; iii) Respondent failed to operate its kiln during the period January 1, 2005 through June 30, 2006 such that the temperature of the gas at the inlet to the kiln's baghouse never exceeded the temperature established during the most recent performance test for that requirement, in violation of 40 C.F.R. §§ 63.1344(a) and (b) and the corresponding provisions of its Title V operating permit; iv) Respondent failed to maintain an adequately documented operating and maintenance plan and an adequately documented start-up, shutdown and malfunction plan during the period July 1, 2004 through April 1, 2007 for its kiln and associated equipment, in violation of 40 C.F.R. §§ 63.150(a) and 63.6(e)(3) and the corresponding provisions of its Title V operating permit; and v) Respondent failed to limit the opacity of emissions from its kiln to less than or equal to 20% for approximately 34 hours during the period January 1, 2004 through June 30, 2004, in violation of 40 C.F.R. § 63.1343(b)(2) and the corresponding provision of its Title V operating permit.

C. CONSENT AGREEMENT

Conditions of Settlement

19. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states a claim upon which relief can be granted against Respondent.

20. Respondent neither admits nor denies the specific factual allegations contained in this CAFO and consents to the assessment of the penalty stated herein.

21. Respondent waives any defenses it might have as to jurisdiction and venue and consents to the terms of this CAFO.

22. Respondent waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO.

23. Respondent waives its right to appeal any Final Order in this matter and consents to the issuance of a Final Order without further adjudication.

24. Respondent certifies that it is currently operating and will operate the facility described in this CAFO in compliance with the CAA and EPCRA and the federal regulations promulgated thereunder.

D. TERMS OF SETTLEMENT

Supplemental Environmental Project

25. Respondent shall complete the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvements. Not

more than 30 days after the effective date of this CAFO, Respondent shall begin implementation (as more specifically described in Attachment A to this CAFO) of a concrete paving and sweeper/vacuum project at its facility in Thomaston, Maine. The SEP will minimize fugitive particulate matter at Respondent's facility 1) by paving certain areas of the facility whose surfaces consist of dirt or gravel; and 2) by ensuring that particulate matter accumulating at the facility is swept and vacuumed in a timely manner. The concrete paving and sweeper/vacuum SEP shall be completed in accordance with the schedule included in Attachment A. During periods of operation of the facility, weather conditions permitting, Respondent shall use the sweeper/vacuum truck no fewer than an average of 30 hours per week at the facility during the calendar year, for at least ten years, to better control fugitive particulate matter emissions at its facility.

26. The total expenditure for the SEP shall be not less than two hundred ninety-eight thousand dollars (\$298,000). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report and periodic SEP reports described in paragraph 28 herein.

27. Respondent hereby certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law, any court order or settlement of any lawsuit, or regulation, nor is Respondent required to perform or develop the SEP under any grant or agreement with any governmental or private entity, as injunctive relief in this or

any other case, or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

28. Respondent shall submit a SEP Completion Report to EPA within 60 days after completion of the paving activities and purchase of a dry sweeper / vacuum truck, as identified in this CAFO and in Attachment A. Respondent shall also submit periodic SEP reports for a period of ten (10) years, every three hundred sixty five (365) days, beginning three hundred sixty five (365) days from the effective date of this CAFO, in relation to the specific requirements in this CAFO applicable to the use of the dry sweeper / vacuum truck. The SEP Completion Report and periodic SEP reports shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders and receipts, canceled checks, or wire transfer records;
- (iii) Certification that the SEP has been and will continue to be fully implemented pursuant to the provisions of this CAFO; and
- (iv) A description of the anticipated environmental and health benefits to be achieved by implementation of the SEP.

29. Respondent agrees that failure to submit a complete and timely SEP Completion Report or periodic SEP reports shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to

paragraph 35 below.

30. Respondent shall submit the SEP Completion Report, the periodic SEP reports, and all other correspondence and certifications required by this CAFO, by first class mail or overnight delivery service, to:

Chris Rascher, Environmental Engineer
Mail Code SER
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

31. In itemizing its costs in the SEP Completion Report and periodic SEP reports, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report or periodic SEP reports include 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. Canceled 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.

32. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this CAFO, Respondent shall, by an officer or authorized representative, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not

misleading by signing the following statement:

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

33. After receipt of the SEP Completion Report described in paragraph 28 above, EPA will notify the Respondent, in writing: i) identifying any deficiencies in the SEP Completion Report itself and providing Respondent an opportunity to revise the report; or (ii) indicating that the project has been completed satisfactorily; or (iii) determining that the project has not been completed satisfactorily and seeking stipulated penalties in accordance with paragraph 35 herein.

34. If EPA elects to exercise option (i) or (iii) above, Respondent may object in writing to the notification of deficiency given pursuant to paragraph 33 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 the adequacy of the SEP Completion Report and/or the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. In the event the

SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 35 herein.

35. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described herein and/or to the extent that the actual expenditures for the SEP do not equal or exceed two hundred ninety-eight thousand (\$298,000), Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, for a SEP that has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of three hundred nine thousand nine hundred dollars (\$309,900) plus interest from the date this CAFO is signed by the Regional Judicial Officer;

(ii) If the SEP is not completed satisfactorily, but the Respondent: a) made good faith and timely efforts to complete the SEP; and b) certifies, with supporting documentation, that Respondent spent at least 90% of two hundred ninety-eight thousand (\$298,000) on the SEP, Respondent shall not be liable for any stipulated penalty;

(iii) If the SEP is completed satisfactorily pursuant to this CAFO, and the Respondent spends at least 90% of two hundred ninety-eight thousand (\$298,000) on the SEP, no stipulated penalty shall accrue.

(iv) If the SEP is completed satisfactorily pursuant to this CAFO, but the Respondent spends less than 90% of two hundred ninety-eight thousand (\$298,000) Respondent shall pay a stipulated penalty to the United States in the amount of two dollars for every one dollar less than two hundred ninety-eight thousand (\$298,000) expended by Respondent on the SEP.

(v) For failure to submit a timely and complete SEP Completion Report described above, Respondent shall pay a stipulated penalty in the amount of \$200 for each day, after the date it is due, on which Respondent fails to submit a timely and complete report, but in no event shall any stipulated penalty under this subparagraph 35.(v) exceed \$20,000.

36. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

37. Stipulated penalties under paragraph 35 above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the satisfactory completion of the activity.

38. 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 paragraphs 49 and 50 below. Interest and late charges shall be paid as stated in paragraphs 52 and 53 herein. EPA may in its discretion completely forego or reduce the amount of any stipulated penalty due under this CAFO.

39. "Force Majeure" for purposes of this CAFO, is defined as any event arising from causes entirely beyond the control of Respondent, including its contractors and subcontractors, that delays or prevents the timely performance of the SEP under this CAFO notwithstanding Respondent's best efforts to avoid the delay. "Best efforts" include anticipating any potential Force Majeure event and addressing the effects of any such event (a) as it is occurring, and (b) after it has occurred, such that the delay is minimized to the greatest extent possible. Force Majeure does not include Respondent's financial inability to perform any action under the SEP.

40. If an event occurs which causes or may cause Respondent to fail to fully comply in a timely manner with any provision of the SEP, Respondent shall provide written notice via facsimile transmission and mail to EPA within seven (7) days of when Respondent first knew or should have known of the event. In the notice, Respondent shall specifically reference the Force Majeure provisions in this CAFO, and describe the expected length of time the delay or impediment to performance may persist; the known or suspected causes of the delay or impediment; the measures taken or to be taken by Respondent to prevent or minimize the delay or impediment; and the timetable by which those measures will be implemented.

41. Failure by Respondent to fully comply with the notice requirements set out in paragraph 40, above, shall render the remainder of the Force Majeure provisions in this CAFO void and of no effect as to the particular event involved,

and shall constitute a waiver of Respondent's rights under this CAFO to obtain an extension of time based on such event.

42. If EPA agrees that Respondent's failure to comply with a provision of the SEP is attributable to Force Majeure, EPA and Respondent shall stipulate in writing to an extension of time for the performance of the affected requirements of the SEP, not to exceed the amount of time lost due to the actual unavoidable delay resulting from such circumstances. Stipulated penalties shall not accrue for the number of days constituting the actual unavoidable delay caused by such circumstances.

43. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP 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 Clean Air Act and the Emergency Planning and Community Right-to-Know Act of 1986."

44. 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. In addition, Respondent hereby agrees that, within thirty (30) days of the date it submits its federal tax reports for the calendar year in which the above-identified SEP is completed, it will submit to EPA a certification that any funds expended in the performance of the SEP have not been deducted from federal taxes or capitalized into inventory or basis.

Penalty

45. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation for violations of Section 313 of EPCRA, 42 U.S.C. §11023. Pursuant to the Debt Collection Improvement Act ("DCIA"), 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 are subject to a penalty of up to \$32,500 per day of violation.

46. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes the assessment of a civil administrative penalty of up to \$25,000 per day for each violation. Pursuant to the DCIA and 40 C.F.R. Part 19, violations that occurred after March 15, 2004, are subject to up to \$32,500 per day of violation. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator of EPA and the Attorney General of the United States jointly determined to waive the statutory limitations relating to penalty amount and period of violation in Section 113(d) because this case is appropriate for administrative penalty action.

47. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and taking into account the relevant statutory penalty criteria, the facts recounted in this CAFO and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of seventy-seven thousand four hundred seventy dollars (\$77,470) for the violations alleged in this CAFO. The penalty of seventy-seven thousand four hundred seventy dollars (\$77,470) shall be

apportioned in the following manner: Forty-two thousand six hundred ten dollars (\$42,610) for the CAA violations and thirty-four thousand eight hundred sixty dollars (\$34,860) for the EPCRA violations.

48. Respondent shall pay the total penalty of seventy-seven thousand four hundred seventy dollars (\$77,470) within thirty (30) calendar days of the effective date of this CAFO as set forth in the Final Order.

49. Respondent shall make payment by submitting one certified or cashier's check for the entire penalty amount, to the order of the "Treasurer, United States of America," to:

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

50. Respondent shall note the case name and CAA and EPCRA docket numbers of this action on the check and in an accompanying cover letter, and shall provide copies of the check and letter to:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region I, Suite 1100, Mail Code RCH
One Congress Street
Boston, MA 02114-2023

and

Gregory Dain
Senior Enforcement Counsel
U.S. Environmental Protection
Agency, Region I, Suite 1100, Mail Code SEL

One Congress Street
Boston, MA 02114-2023

51. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim.

52. In the event that any partial payment of the civil penalty amount relating to the EPCRA violations, plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. §901.9(b)(2). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. §901.9(d). For purposes of any interest payments that may be required under this CAFO, the check and accompanying cover letter shall indicate either the CAA or EPCRA docket number as appropriate.

53. Pursuant to §113(d)(5) of the CAA, if Respondent fails to pay any penalty amount it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid within 30 calendar days of Respondent's receipt of this CAFO signed by the Regional Judicial Officer. In that event, interest will

accrue from the date this CAFO was signed by the Regional Judicial Officer, at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorneys fees and collection costs. And a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. For purposes of any interest payments that may be required under this CAFO, the check and accompanying cover letter shall indicate either the CAA or EPCRA docket number as appropriate.

54. The civil penalty under this CAFO, and any interest, nonpayment penalties and charges described in this CAFO, shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

55. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA and Section 113(d) of the CAA for the violations alleged in this CAFO. Compliance with this CAFO shall not be

a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

56. This CAFO shall not be construed to limit the rights of EPA or the United States to obtain penalties or injunctive relief under the CAA or EPCRA, or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in this CAFO. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive relief, civil penalties, other appropriate relief relating to Dragon's Thomaston facility or Dragon's violations, Dragon 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 upon any contention that the claims raised by EPA or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically identified in this CAFO and have been specifically resolved pursuant to this CAFO.

57. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, successors and assigns.

58. The parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

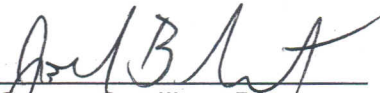
59. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

FOR RESPONDENT DRAGON PRODUCTS COMPANY

Name Raymond D. Gross Title PLANT MANAGER

Date 9/16/08

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

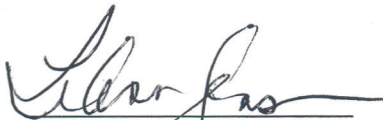
For 
Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: 9/17/08

FINAL ORDER

In accordance with 40 C.F.R. Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of the referenced Consent Agreement. This Final Order shall become effective upon filing, in accordance with 40 C.F.R. § 22.31(b).

U.S. ENVIRONMENTAL PROTECTION AGENCY



LeAnn Jensen
Regional Judicial Officer
U.S. EPA, Region 1

Date:

9/23/08

Acting

ATTACHMENT A

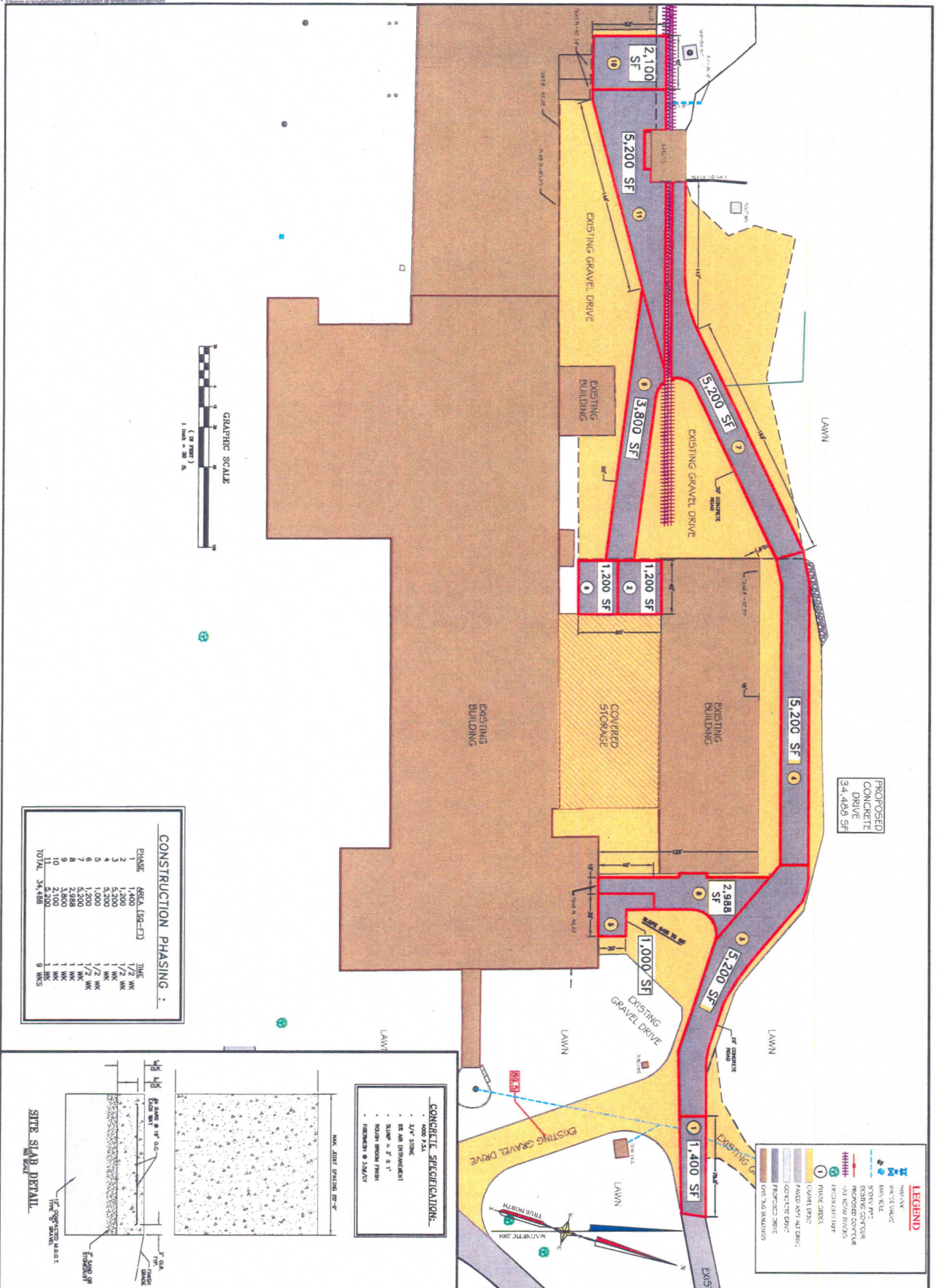
DRAGON PRODUCTS COMPANY, LLC – THOMASTON PLANT

Supplemental Environmental Project

Dragon Products Company, LLC (“Dragon”) agrees to implement a Supplemental Environmental Project (“SEP”) consisting of a dust minimization plan (the “Plan”) at Dragon’s Thomaston Plant. The purpose of the Plan is to reduce fugitive dust emissions to levels below those achievable by the use of best management practices as required by Dragon’s CAA Title V operating permit and all other applicable law. The elements of the Plan include:

Paving: Dragon shall install a minimum of 34,488 ft² of concrete pavement in the areas of Dragon’s facility identified in the gray colored portions of the enclosed graphic. The identified areas are areas where there is mobile vehicle and equipment traffic. The above-referenced graphic of the paving project, attached hereto, is fully incorporated into, and enforceable as a part of, the foregoing Consent Agreement and Final Order. Subject to the “Force Majeure” provisions in paragraphs 39 through 42 of the Consent Agreement and Final Order, Dragon agrees to complete the paving project within eighty (80) days of the effective date of the Consent Agreement and Final Order.

Dry Sweeper / Vacuum Truck: Dragon shall purchase a dry sweeper/vacuum truck for full-time use in the areas 1) to be paved as part of the SEP and as identified by the gray areas on the attached graphic, and 2) all other paved areas where particulate matter accumulates and it is feasible to use the dry sweeper / vacuum truck. Dragon shall use the dry sweeper / vacuum truck at any time the facility is operating during each of the twelve months of the calendar year, weather permitting. During such periods, subject to weather conditions that do not preclude the truck’s use, Dragon shall use the dry sweeper / vacuum truck at Dragon’s facility no fewer than an average of thirty (30) hours per week. Dragon shall purchase the dry sweeper /vacuum truck no later than the earlier of the completion date of the paving project referenced above or eighty (80) days after the effective date of the Consent Agreement and Final Order. Dragon shall use the dry sweeper / vacuum truck, or any replacement thereof, for not less than ten (10) years following the date of its acquisition.



PROPOSED CONCRETE DRIVE
34,486 SF

LEGEND

- PAVED AREA WITH SEAL COAT
- PROPOSED CONCRETE
- EXISTING CONCRETE
- PROPOSED GRAVEL DRIVE
- EXISTING GRAVEL DRIVE
- PAVED AREA WITH AGGREGATE
- PROPOSED GRAVEL STORAGE
- EXISTING GRAVEL STORAGE
- PROPOSED PAVED AREA
- PROPOSED GRAVEL AREA

CONSTRUCTION PHASING :

| PHASE | AREA (SQ-FT) | TIME |
|-------|--------------|--------|
| 1 | 1,400 | 1/2 WK |
| 2 | 2,200 | 1/2 WK |
| 3 | 5,200 | 1 WK |
| 4 | 5,200 | 1 WK |
| 5 | 1,000 | 1/2 WK |
| 6 | 5,200 | 1/2 WK |
| 7 | 2,988 | 1 WK |
| 8 | 2,988 | 1 WK |
| 9 | 2,100 | 1 WK |
| 10 | 2,100 | 1 WK |
| 11 | 5,200 | 1 WK |
| TOTAL | 34,486 | 9 WKS |

CONCRETE SPECIFICATIONS:

- 3000 PSI
- 60 MI. THICKNESS
- 5'-0" SLAB
- FINISH: BROOM FINISH
- REINFORCING: #3@12"



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 1

BEFORE THE ADMINISTRATOR

In the Matter of:)
) Docket Nos. CAA 01-2008-0068
) EPCRA 01-2008-0069
 Respondent)
)
 Dragon Products Company LLC)
)
 Respondent)
 _____)

CERTIFICATE OF SERVICE

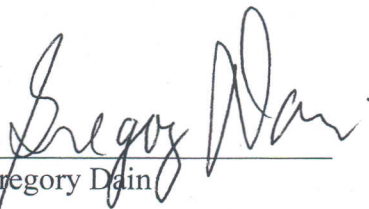
I hereby certify that the foregoing Consent Agreement and Final Order has been distributed on the date indicated below, in the following manner:

Original and One Copy,
Hand Delivered:

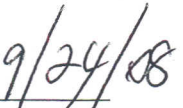
Ms. Wanda Santiago
Regional Hearing Clerk (RAA)
U.S. EPA, Region 1
One Congress Street
Suite 1100
Boston, MA 02114-2023

Copy by Certified Mail, Return
Receipt Requested:

Jon Jewett, III
Vice President and General Counsel
Giant Cement Holding, Inc.
320-D Midland Parkway
Summerville, SC 29485



Gregory Dain



Date