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

_____)	Docket No. CAA-09-2020-0059
In the Matter of:)	
The Boise Cascade Company)	CONSENT AGREEMENT AND
Respondent)	FINAL ORDER PURSUANT TO
_____)	40 C.F.R. §§ 22.13 and 22.18

I. CONSENT AGREEMENT

A. PRILIMINARY STATEMENT

1. This is a civil administrative penalty assessment proceeding brought under section 113(d) of the Clean Air Act (the “Act”), 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. In accordance with 40 C.F.R. §§ 22.13 and 22.18, entry of this

Consent Agreement and Final Order (“CAFO”) simultaneously initiates and concludes this matter.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region IX (“EPA”), who has been duly delegated the authority to initiate and settle civil administrative penalty proceedings under section 113(d) of the Act.
3. Respondent is the Boise Cascade Company (“Boise Cascade”). Respondent is a manufacturer and distributor of building materials. Boise Cascade owns, operates, and hires diesel-fueled vehicles driven in California.
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CAFO without adjudication of any issues of law or fact herein and agree to comply with the terms of this CAFO.

B. JURISDICTION

5. Pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), EPA and the United States Department of Justice jointly determined that this matter, which involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment.
6. The regulation at issue in this action has been incorporated into the federally-approved and federally-enforceable California state implementation plan (“SIP”); therefore, in satisfaction of the notice requirements of section 113(a) of the Act, 42 U.S.C. § 7413(a), on May 8, 2020, the EPA issued to Respondent a notice of violation (“NOV”) and provided a copy of the NOV to the California Air Resources Board (“CARB”), providing notice to both Respondent and CARB that the EPA found that Respondent committed the alleged violations described

in Section I.E of this CAFO and providing Respondent an opportunity to confer with the EPA. On June 17, 2020, Representatives of Respondent and the EPA discussed the NOV.

C. GOVERNING LAW

Clean Air Act

7. Pursuant to section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region (“AQCR”) in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for California AQCRs are listed at 40 C.F.R. § 81.305.
8. There are multiple AQCRs designated as nonattainment for fine particulate matter (i.e. PM_{2.5}) in California. *See* 40 C.F.R. § 81.305.
9. Section 110(a) of the Act requires that all states adopt SIPs that provide for the implementation, maintenance and enforcement of primary and secondary air quality standards. 42 U.S.C. § 7410(a).
10. A person’s failure to comply with any approved regulatory provision of a SIP renders the person in violation of an applicable implementation plan and subject to enforcement under section 113(a)(1) of the Act. 42 U.S.C. § 7413(a)1).

Title 13, Section 2025 of the California Code of Regulations: On-Road Heavy-Duty Diesel Vehicles

11. On December 14, 2011, CARB amended its “Regulation to reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles,” codified at title 13, section 2025 of the California Code of Regulations (the “Truck and Bus Regulation”).

12. The Truck and Bus Regulation was incorporated into the federally-approved and federally-enforceable California SIP on May 4, 2012. *See* 77 Fed. Reg. 20308 (April 4, 2012). Since that time, the EPA has coordinated with CARB regarding the EPA's enforcement of the Truck and Bus Regulation pursuant to section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), and 40 C.F.R. § 52.23.
13. Section 2025(a) of the Truck and Bus Regulation states that the purpose of the regulation is “to reduce emissions of diesel particulate matter (PM), oxides of nitrogen (NO_x) and other criteria pollutants from in-use diesel-fueled vehicles.”
14. Section 2025(b) of the Truck and Bus Regulation states that the regulation applies to diesel-fueled trucks and buses that are privately or federally owned, and to publicly and privately-owned school buses, that have a manufacturer's gross vehicle weight rating (“GVWR”) greater than 14,000 pounds. The Truck and Bus Regulation requires, in part, Fleet Owners to upgrade their vehicles to meet specific performance standards for NO_x and PM.
15. Under section 2025(d)(18) of the Truck and Bus Regulation, “Diesel Particulate Matter (PM)” means “the particles found in the exhaust of diesel fueled compression ignition engines...”
16. Under section 2025(d)(28) of the Truck and Bus Regulation, “Fleet” means “one or more vehicles, owned by a person, business, or government agency, traveling in California and subject to this regulation.”
17. Under section 2025(d)(29) of the Truck and Bus Regulation, “Fleet Owner” means, with certain exceptions, “either the person registered as the owner or lessee of a vehicle by the California Department of Motor Vehicles (DMV), or its equivalent in another state, province, or country, as evidenced on the vehicle registration document carried in the vehicle.”

18. Under section 2025(d)(42) of the Truck and Bus Regulation, “Motor Carrier” means “the same as defined in California Vehicle Code Section 408 for fleets other than those that are comprised entirely of school buses...”
19. California Vehicle Code defines “Motor Carrier” as “the registered owner, lessee, licensee, or bailee of any vehicle set forth in [California Vehicle Code] Section 34500, who operates or directs the operation of any such vehicle on either a for-hire or not-for-hire basis. ‘Motor carrier’ also includes a motor carrier’s agents, officers, and representatives, as well as employees responsible for the hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories.”
20. Under section 2025(d)(47) of the Truck and Bus Regulation, “Person” means “an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.”
21. Under section 2025(s)(4) of the Truck and Bus Regulation, motor carriers or brokers must maintain bills of lading and other documentation identifying the motor carrier or broker who hired or dispatched the vehicle and the vehicle dispatched.
22. Section 2025(x)(2) of the Truck and Bus Regulation provides that “[a]ny in-state or out-of-state motor carrier, California broker, or any California resident who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation and comply with the record keeping requirements of Section 2025(s)4.”

23. Section 2025(x)(3) of the Truck and Bus Regulation provides that “[c]ompliance may be accomplished by keeping at the business location, a copy of the Certificate of Reported Compliance with the In-Use On-Road Diesel Vehicle Regulation for each fleet, or in the vehicle.”

D. STIPULATED FACTS

24. On December 3, 2019, the EPA issued an information request to Respondent pursuant to section 114 of the Act, 42 U.S.C. § 7414, seeking information concerning Respondent’s compliance with the Truck and Bus Regulation, Drayage Truck Regulation (under California Code of Regulations, section 2027), and Transport Refrigerated Units Regulation (under California Code of Regulations, section 2477), which was shared with CARB.
25. Boise Cascade submitted a response, dated January 24, 2020, to the information request.
26. On March 3, 2020, EPA Region 9 sent a follow-up information request to Respondent.
27. On March 11, 2020, Respondent submitted its response to the follow-up information request.
28. As referenced in paragraph 6 above, on May 8, 2020, the EPA issued an NOV to Respondent and provided a copy of the NOV to CARB regarding the alleged violations described in Section I.E of this CAFO, providing notice to both Respondent and CARB and an opportunity for Respondent to confer with the EPA regarding the NOV.
29. Representatives of Respondent and the EPA discussed the NOV on June 17, 2020 and have had additional discussions on subsequent occasions to negotiate the terms of this settlement, including Respondent’s actions with respect to its recordkeeping and verification systems.
30. Respondent represents that it has taken actions with respect to its third-party carriers sufficient to address the violations the EPA alleged in the NOV and to assure compliance with the Truck and Bus Regulation.

E. VIOLATIONS OF LAW ALLEGED BY THE EPA

31. Respondent is a “Person” as that term is defined under section 302(e) of the Act, 42 U.S.C. § 7602(e), and section 2025(d)(47) of the Truck and Bus Regulation.
32. At all times relevant to this CAFO, Respondent was a “Fleet Owner” of a “Fleet” of vehicles as those terms are defined under sections 2025(d)(28) and (29) of the Truck and Bus Regulation.
33. At all times relevant to this CAFO, Respondent was a “Motor Carrier” as that term is defined under section 2025(d)(42) of the Truck and Bus Regulation.
34. Respondent hired at least 75 different Motor Carriers between January 1, 2015 and December 3, 2019, for which the Respondent did not verify compliance with the Truck and Bus Regulation.
35. Respondent violated section 2025(x)(2) of the Truck and Bus Regulation by failing to verify that each of the 75 Motor Carriers it hired between January 1, 2015 and December 3, 2019 was in compliance with the Truck and Bus Regulation.

F. TERMS OF CONSENT AGREEMENT

36. For the purpose of this proceeding, as required by 40 C.F.R. 22.18(b)(2), Respondent:
 - a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO and over Respondent;
 - b. admits to the stipulated facts contained in Section I.D of this CAFO;
 - c. neither admits nor denies the specific factual allegations contained in Section I.E of this CAFO;
 - d. consents to the assessment of a civil penalty under this Section, as stated below;
 - e. consents to the conditions specified in this CAFO;

- f. waives any right to contest the allegations set forth in Section I.E of this CAFO; and
- g. waives its rights to appeal the proposed Order contained in this CAFO.

Civil Penalty

37. Respondent agrees to:

- a. pay the civil penalty of ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000) (“EPA Penalty”) within 30 calendar days of the effective date of this CAFO;
- b. pay the EPA Penalty using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying each and every payment with “Docket No. CAA-09-2020-0059”; and
- c. Within 24 hours of payment of the EPA Penalty, send proof of payment to Mark Sims at:

Enforcement and Compliance Assurance Division, ENF-2-1
U.S. Environmental Protection Agency, Region IX
75 Hawthorne St. San Francisco, CA 94105

and at Sims.Mark@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with “Docket No. CAA-09-2020-0059”).

38. If Respondent fails to pay the civil administrative penalty specified in paragraph 37(a) of this CAFO within 30 days after the Effective Date of this CAFO, then Respondent shall pay to the EPA a stipulated penalty in the amount of ONE THOUSAND DOLLARS

(\$1000.00) for each day the default continues plus the penalty sum specified in paragraph 37(a), upon written demand by the EPA.

39. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- d. suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

Additional Terms of Settlement

40. 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 assignees. Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in

Respondent. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this CAFO unless EPA has provided written approval of the release of said obligations or liabilities.

41. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
42. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
43. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
44. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

45. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

46. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.
47. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
48. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$101,439 per day per violation, or both, as provided in section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
49. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
50. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
51. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.


H. EFFECTIVE DATE

52. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed CAFO to Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement In the Matter of the Boise Cascade Company, Docket No. CAA-09-2020-0059 is hereby stipulated, agreed, and approved for entry.

FOR RESPONDENT:

9/22/2020
Date


Signature

Printed Name: Daniel I. Silverman

Title: Associate General Counsel

Address: P.O Box 50
Boise, ID 83728

The foregoing Consent Agreement In the Matter of the Boise Cascade Company, Docket No. CAA-09-2020-0059 is hereby stipulated, agreed, and approved for entry.

FOR COMPLAINANT:

Date

AMY MILLER-
BOWEN

Digitally signed by
AMY MILLER-BOWEN
Date: 2020.09.23
09:29:47 -07'00'

Amy C. Miller-Bowen
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

II. FINAL ORDER

EPA Region IX and the Boise Cascade Company having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2020-0059) be entered, and Respondent shall pay a civil administrative penalty in the amount of ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000) and otherwise comply with the terms set forth in the CAFO.

Date

**Steven L.
Jawgiel**

Digitally signed by
Steven L. Jawgiel
Date: 2020.09.25
10:32:42 -07'00'

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

CERTIFICATE OF SERVICE

This is to certify that the foregoing Consent Agreement and Final Order in the matter of Boise Cascade Company (CAA-09-2020-0059) was filed with the Regional Hearing Clerk and sent to the parties as follows:

ELECTRONIC MAIL

Respondent:

Daniel Silverman
Associate General Counsel
Boise Cascade Company
DanielSilverman@BC.com

ELECTRONIC MAIL

Complainant:

Melanie Shepherdson
Senior Counsel
U.S. EPA, Region IX
Shepherdson.Melanie@epa.gov

Date: _____

Steven Armsey
Regional Hearing Clerk
U.S. EPA – Region IX