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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CAA-10-2013-0016
Valley Paving & Asphalt, Inc.,)	
)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and Valley Paving & Asphalt, Inc., (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CAA, together with the specific provisions of the CAA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Under Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), it is unlawful for any person to operate a major source, as defined in Section 501, 42 U.S.C. § 7661, except in compliance with a permit issued by a permitting authority under Title V of the CAA.

3.2. Pursuant to the authority of Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), EPA has adopted regulations at 40 C.F.R. Part 71 setting forth the procedures and terms under which EPA will issue permits (“Title V permits”) for sources in state, local, and tribal areas, including the 1863 Nez Perce Reservation, that do not have an EPA-approved Title V program (“Part 71 sources”).

3.3. 40 C.F.R. § 71.2 defines “major source” for Part 71 sources.

3.4. Respondent owns and operates a portable hot mix asphalt plant #2, (the “facility”) on the 1863 Nez Perce Reservation.

3.5. From September 16, 2011 to September 28, 2011, the facility’s potential emissions (in tons per year) from the facility exceed the major source threshold for particulate matter, sulfur oxides, nitrogen oxides, and carbon monoxide. Therefore, on those dates, the facility was a major source.

3.6. Respondent did not have a Title V permit to operate from September 16, 2011, to September 28, 2011.

3.7. Pursuant to Sections 301(a) and 301(d)(4) of the CAA, EPA has adopted air quality regulations that apply to air pollution sources on Indian Reservations in Idaho, Oregon, and Washington, which are codified at 40 C.F.R. Part 49, Subparts C and M. These rules are known as the “Federal Air Rules for Reservations” (FARR) and became effective on June 7, 2005.

3.8. The FARR provisions that apply on the 1863 Nez Perce Reservation are incorporated by reference at 40 C.F.R. § 49.10410(a)-(p), and specifically include 40 C.F.R. §§ 49.123 and 49.138.

3.9. 40 C.F.R. § 49.123(a) defines “air pollution source” as any building, structure, facility, installation, activity, or equipment, or combination of these, that emits, or may emit, an air pollutant.

3.10. 40 C.F.R. § 49.138, the Rule for the Registration of Air Pollution Sources and the Reporting of Emissions, applies to any person who owns or operates a Part 71 source or an air pollution source that is subject to a standard established under Section 111 or Section 112 of the CAA.

3.11. 40 C.F.R. § 49.138(d) provides that any person who owns or operates a Part 71 source must submit reports as specified in paragraph (f) of this section. All registration information and reports must be submitted on forms provided by EPA.

3.12. 40 C.F.R. § 49.138(f) requires the owner or operator of a Part 71 source to submit an annual registration report.

3.13. Respondent failed to submit an annual registration report to EPA, in accordance with 40 C.F.R. § 49.138(f).

3.14. Respondent violated Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), by operating a major air pollutant source on the 1863 Nez Perce Reservation from September 16, 2011 to September 28, 2011, without a Title V permit.

3.15. Respondent violated 40 C.F.R. § 49.10410(o), which incorporates by reference 40 C.F.R. § 49.138(f), by failing to submit an annual registration report to EPA for the operation of its facility on the 1863 Nez Perce Reservation from September 16, 2011 to September 28, 2011.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part I of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations set forth in Parts II and III of this CAFO.

4.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into consideration the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violation, as well as other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is thirty-six thousand three hundred and sixty dollars (\$36,360.00).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check Respondent's name and address, the case name, and the docket number of the case.

4.6. Respondent must deliver photocopies of the check described in Paragraph 4.5 via United States mail to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Donald Dossett
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-184
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), together with interest, fees, costs, and additional penalties described below. In any such collection action, the validity, amount, and appropriateness of the Order or penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. 7413(d)(5), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order set forth in Part IV, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) the United States' enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V.

4.12. The provisions of this CAFO shall bind Respondent and its officers, directors, agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

October 3, 2012

FOR RESPONDENT:

Thomas C. Reiner

Signature

Print Name: Thomas C. Reiner

Title: Vice President

DATED:

10/11/2012

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with these terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder.

5.3. Respondent shall pay a civil penalty in the amount of thirty-six thousand three hundred and sixty dollars (\$36,360.00), as provided in Part IV above.

5.4. This Final Order is effective upon filing.

SO ORDERED this 15th day of October, 2012.


THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE


The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Valley Paving & Asphalt, Inc., Docket No.: CAA-10-2013-0016**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Jillian Bunyan
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Chris Seubert, President
Valley Paving & Asphalt, Inc.
P.O. Box 2270
McCall, Idaho 83638

DATED this 15th day of Oct, 2012 
Signature
Candace H. Smith
Print Name

Regional Hearing Clerk
EPA Region 10

