

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Brdaric Excavating, Inc.
500 Main Street
Swoyersville, PA 18704**

Respondent.

EPA Docket No. CAA-03-2019-0061

CONSENT AGREEMENT

**Proceeding under Section 113 (a) and (d)
of the Clean Air Act**

CONSENT AGREEMENT

**U.S. EPA-REGION 3-RHC
FILED-11APR2019pm2:23**

A. PRELIMINARY STATEMENT

This administrative Consent Agreement (the “Consent Agreement”) is entered into and between the Complainant, the Director of the Air Protection Division, United States Environmental Protection Agency, Region III (“EPA” or “Complainant”), and Brdaric Excavating, Inc. (the “Respondent” or “Brdaric”), pursuant to Section 113(a) and (d) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the “Consolidated Rules”). The Consolidated Rules provide at 40 C.F.R. § 22.13, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be commenced and concluded simultaneously by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

This Consent Agreement and the accompanying Final Order (collectively referred to as the “CAFO”) address alleged violations by Respondent of requirements found in a federally enforceable state operating permit (“FESOP”) issued by the Pennsylvania Department of Environmental Protection (“PADEP”) pursuant to regulations incorporated into Pennsylvania’s CAA State Implementation Plan (the “PA SIP”) to the Respondent and governing operations at the Facility; and of 40 C.F.R. Part 63, Subpart ZZZZ, the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (“the RICE Rule”) of the CAA, as described below.

B. GENERAL PROVISIONS

1. Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), authorizes the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement, rule, plan, order, waiver, or permit promulgated, issued, or approved under Subchapters I, IV, V and VI [also referred to as

Titles I, IV, V and VI] of the Act. The authority to issue the accompanying Final Order has been duly delegated to the Regional Judicial Officer, EPA Region III.

2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO and agrees not to contest EPA's jurisdiction with respect to the issuance, execution and enforcement of this CAFO.
3. Except as provided in Paragraph 2 above, Respondent neither admits nor denies the specific findings of fact and the conclusions of law set forth in this CAFO.
4. Respondent consents to the issuance of this CAFO, agrees to comply with the terms and conditions set forth therein, and consents to the payment of a civil penalty as set forth in this CAFO.
5. Respondent agrees to pay its own costs and attorney fees.
6. Respondent agrees that this CAFO shall apply to, and be binding upon, Respondent, its officers, directors, servants, employees, agents, successors and assigns.
7. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty amount or a longer period of violation is appropriate for administrative penalty action. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), further provides that any such determination by the Administrator and the Attorney General shall not be subject to judicial review. Under 40 C.F.R. Part 19, § 19.4, the figure of \$200,000 has been increased to \$362,141.

C. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law.

8. Respondent is a private corporation organized under the laws of the Commonwealth of Pennsylvania. Respondent operates a rock quarry and crushing facility located at 500 Main Street, Swoyersville, PA, 18704 (the "Facility").
9. Respondent is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d), 42 U.S.C. § 7413(d), because it is a corporation. At all times relevant to the violations alleged in this Consent Agreement, Respondent has been the owner and operator of the Facility.
10. On April 16, 2015, duly authorized representatives of the EPA conducted a compliance evaluation at the Facility pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414 (the "Inspection").

11. The Administrator of EPA and the Attorney General of the United States, each through their respective delegates, have jointly determined that administrative penalty action is appropriate for the longer period of violation involved in this matter.

Violation of FESOP

12. Section 113 of the Act, 42 U.S.C. § 7413, authorizes the EPA to take action to ensure that air pollution sources comply with all federally applicable requirements of a federally enforceable state operating permit ("FESOP") issued by a state as part of a federally approved SIP. Pursuant to 40 C.F.R. § 52.23, failure to comply with any approved regulatory provision of a State implementation plan, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the State implementation plan, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act.
13. The PA SIP was approved by EPA; see 40 C.F.R. § 52.2020(b) and (c). General and non-attainment area permit requirements are promulgated at Title 25 of the Pennsylvania Code ("Pa. Code"), Section 127, Subchapter F. These requirements have been incorporated in the federally approved PA SIP.
14. The PA SIP includes 25 Pa. Code Section 127.441(a), which states that "[a] permit may contain terms and conditions [the Pennsylvania Department of Environmental Protection ("PADEP")] deems necessary to assure the proper operation of the source."
15. The PA SIP also includes 25 Pa. Code Section 127.444, which provides, in relevant part, that "[a] person may not cause or permit the operation of a source subject to [an operating permit] unless the source and air cleaning devices identified in the application for the plan approval and operating permit and the plan approval issued to the source are operated and maintained in accordance with specifications in the application and conditions in the plan approval and operating permit issued by the Department."
16. On March 21, 2014, PADEP issued Respondent FESOP # 40-00104, with an effective date of May 9, 2014, which governed the operation of manufacturing equipment and air pollution control devices at the Facility for the period from May 9, 2014 through May 9, 2019 (the "Permit").
17. At the time of the Inspection there were two crushing units in operation at the Facility: a primary/jaw crusher powered by a 200 horsepower ("hp") diesel engine; and a cone crusher powered by a 200 hp electric engine. There were also in operation at the Facility at the time of the Inspection a Chieftain screen powered by a 100 hp diesel engine, and a triple deck screen. These pieces of equipment size and screen the various crushed rock into grades or sizes of stone for sale. Additionally, there were 8 conveyors to move the sized stone onto piles in operation at the Facility at the time of the Inspection. The cone crusher, the triple deck screen and the conveyors are powered by an on-site diesel engine/electric generator with horsepower greater than 500 (the "EGEN"). The crushing operations were installed

approximately in 1998. The EGEN was manufactured in 1981 and was installed in 2000. At the time of the Inspection, no changes had been made to the engines since installed at the facility.

18. The Permit provided at Section C, Part I (Restrictions), paragraph 004, that the permittee [Respondent] may not permit the emission into the outdoor atmosphere of visible air contaminants in such a manner that the opacity of the emission is either of the following:
 - (1) Equal to or greater than 20% for a period or periods aggregating more than three minutes in any 1 hour.
 - (2) Equal to or greater than 60% at any time.
19. The Permit required at Section C (Site Level Requirements), Part III (Monitoring Requirements), paragraph 008, that the permittee [Respondent] shall conduct a weekly inspection during daylight hours when the plant is in production to detect visible emissions in excess of the limits stated in Permit Section C, paragraph 004. Visible emissions may be measured according to the method specified in Permit Section C, paragraph 007, or alternatively, plant personnel who observe any visible emissions will report the incident of visible emissions to PADEP within four hours of each incident and make arrangements for a certified observer to verify the opacity of the visible emissions to have the plume opacity of visible emissions at the Facility measured by qualified personnel.
20. Permit Section C, paragraph 007, provides that visible emissions may be measured using either of the following:
 - (1) A device approved by the Department and maintained to provide accurate opacity measurements.
 - (2) Observers, trained and qualified to measure plume opacity with the naked eye or with the aid of any devices approved by the Department.
21. Permit Section C, Part IV (Recordkeeping Requirements), paragraph 010, provides that all instances of exceedance of the visible or fugitive emission limitations, Permit Section C, paragraphs 001 and 004, shall be recorded in a log book.
22. At the time of the Inspection, Respondent had not installed and operated at the Facility a PADEP-approved opacity measurement device; had not conducted weekly visible emissions observations at the Facility; neither did Respondent employ emissions observers certified in opacity measurement, nor contract or otherwise arrange with any independent certified observer for the purpose of conducting weekly visible emissions observations at the Facility as required by Permit Section C, paragraphs 007 and 008.

23. At the time of the Inspection, Respondent did not maintain a log book at the Facility containing records of any and all instances of exceedance of the visible or fugitive emission limitations, Permit Section C, paragraphs 001 and 004.
24. From May 9, 2014 through the date of the Inspection, Respondent was in violation of Permit Section C, Part III paragraphs 007 and 008, and Section C, Part IV, paragraph 010, as described above, which constitute a violation of Section 113 of the CAA and 40 C.F.R. § 52.23.

Violation of Subpart ZZZZ
(National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines)

25. Section 112 in Title I of the CAA, 42 U.S.C. § 7412, governs the federal control program for hazardous air pollutants (“HAPs”) and directs the EPA to define the categories of sources that are required to control emissions of HAPs. HAPs include any air pollutant listed in Section 112(b) of the CAA, 42 U.S.C. § 7412(b). Section 112(d) of the CAA, 42 U.S.C. § 7412(d), directs EPA to establish national emissions standards for HAPs (“NESHAPs”) for sources in each category to limit the release of HAPs from specific industrial sectors.
26. Pursuant to Section 112(a) of the CAA, 42 U.S.C. § 7412(a), a “major source” is a stationary source that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs. An “area source” pursuant to Section 112(a) of the CAA, 42 U.S.C. § 7412(a), means any stationary source of HAP that is not a major source.
27. The Facility is an area source of HAPs because it is a stationary source which emits or has the potential to emit HAPs including, but not limited to, formaldehyde and carbon monoxide (a surrogate for other HAPs), at levels below major source thresholds.
28. In 2008, EPA issued the RICE Rule pursuant to Section 112 of the CAA, 42 U.S.C. § 7412.
29. The RICE Rule “establishes national emission limitations for hazardous air pollutants (HAP) emitted from stationary reciprocating internal combustion engines (RICE) located at major and area sources of HAP emissions. . . [and] establishes requirements to demonstrate initial and continuous compliance with the emission limitations and operating limitations.” 40 C.F.R. § 63.6580.
30. The RICE Rule applies to owners and operators of “stationary RICE at a major or area source of HAP emissions.” 40 C.F.R. § 63.6585.
31. Pursuant to 40 C.F.R. § 63.6585(a), “[a] stationary RICE is any internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile.”
32. Respondent’s Facility operates the greater than 500 hp EGEN, which is a non-emergency, non-black start, compression ignition (“CI”) stationary RICE. Respondent commenced construction of the Facility RICE (EGEN) before June 12, 2006.

33. Respondent is subject to the RICE Rule because it owns and operates stationary RICEs at an area source of HAP emissions. 40 C.F.R. § 63.6585.
34. The RICE requirements cover any “affected source,” which includes “any existing, new, reconstructed stationary RICE located at a major or area source of HAP emissions.” 40 C.F.R. § 63.6590.
35. Because Respondent commenced construction of the Facility RICE engines before June 12, 2006, they are considered to be “existing” stationary RICE. 40 C.F.R. § 63.6590(a)(1)(iii).
36. Pennsylvania has not taken delegation for the RICE Rule at this date. Therefore, all reports required by the RICE Rule must be submitted to EPA.
37. Pursuant to 40 C.F.R. § 63.6550(a), owners and operators of affected RICE must submit each report in Table 7 of the RICE Rule that applies to the affected sources.
38. Pursuant to 40 C.F.R. § 63.6650(b)(1), owners and operators of affected sources are required to submit semiannual compliance reports for engines >300 horsepower beginning after an affected source’s compliance date in accordance with Table 7 of the RICE RULE.
39. As the owner and operator of an affected source which is a non-emergency, non-black start CI stationary RICE with 500 brake hp, the EGEN, Respondent must submit semiannual compliance reports for that engine, as required by 40 C.F.R. § 63.6650(b)(1) and Table 7 to include all information in § 63.6650(b) by the dates specified in § 63.6650(b).
40. In accordance with 40 C.F.R. § 63.6650(b), Respondent’s compliance date was May 3, 2013. As such Respondent was required to submit semiannual compliance reports for the following periods of time:
 - a. January 1, 2014 until June 30, 2014;
 - b. July 1, 2014 until December 31, 2014;
 - c. January 1, 2015 until June 30, 2015;
 - d. July 1, 2015 until December 31, 2015;
 - e. January 1, 2016 until June 30, 2016;
 - f. July 1, 2016 until December 31, 2016;
 - g. January 1, 2017 until June 30, 2017;
 - h. July 1, 2017 until December 31, 2017; and
 - i. January 1, 2018 until June 30, 2018.
41. From June 2014 through present, Respondent failed to submit the semiannual compliance reports required by the RICE Rule for the EGEN, in violation of 40 C.F.R. § 63.6650(b)(1).

Each such failure constitutes a violation of Sections 112 and 113 of the CAA, 42 U.S.C. §§ 7412 and 7413.

42. Pursuant to 40 C.F.R. § 63.6603(a), the existing stationary RICE located at an area source of HAP emissions is subject to the emission standards found in Table 2d of Subpart ZZZZ. According to Table 2d, emissions of CO from engines rated at 500 hp or greater must be limited or reduced by 70% or more or meet an emission standard of 23 parts per million dry volume (“ppmvd”) at 15% oxygen (“O₂”).
43. EPA has determined that the reduction and emission limit set forth in paragraph 42, above, could not be achieved for the EGEN without installing an after-market control device, or purchasing and operating another engine unit certified by the manufacturer to meet the emission limit in the rule in place of the EGEN.
44. At the time of the EPA inspection, Respondent had not installed an after-market control device on the EGEN at the Facility, nor had it purchased and operated any other engine unit certified by the manufacturer to meet the emission limit in the rule, and thus failed to meet the required emissions reduction and limit for the EGEN in violation of 40 C.F.R. § 63.6603(a).
45. Pursuant to 40 C.F.R. § 63.6612(a), facilities must conduct an initial performance test or other initial compliance demonstration according to Tables 4 and 5 of Subpart ZZZZ, within 180 days after the compliance date that is specified in §63.6595 and according to the provisions in § 63.7(a)(2). The initial performance test is conducted to demonstrate compliance with the emission standards found in Table 2d.
46. Pursuant to 40 C.F.R. § 63.6645(h)(2) for each initial compliance demonstration required in Table 5 to Subpart ZZZZ that includes a performance test, affected sources must submit the Notification of Compliance Status (“NOCS”), including the performance test results, before the close of business on the 60th day following the completion of the performance test according to § 63.10(d)(2).
47. Respondent was required to complete an initial performance test for the EGEN at the Facility by November 3, 2013, but failed to do so until in continuing violation of 40 C.F.R. § 63.6612(a).
48. Respondent was required to submit the NOCS by January 3, 2014, but failed to do so until June 2018 in continuing violation of 40 C.F.R. § 63.6645(h)(2).
49. Respondent’s failure to comply with the requirements of 40 C.F.R. § 63.6650(b)(1), 40 C.F.R. § 63.6603(a), 40 C.F.R. § 63.6612(a), and 63.6645(h)(2) constitute violations of Sections 112 and 113 of the CAA, 42 U.S.C. § 7412 and 7413.

D. SETTLEMENT RECITATION, SETTLEMENT CONDITIONS, AND CIVIL PENALTY

50. Complainant and Respondent enter into this Consent Agreement and the accompanying Final Order in order to settle the violations specifically set forth in Section C of this Consent Agreement.
51. In settlement of the alleged violations enumerated above in Section C of this Consent Agreement, Respondent consents to the assessment and agrees to pay a civil penalty in the amount of Eight Thousand Four Hundred and Twenty Seven dollars \$8,427.00 within the time and manner specified herein.
52. The settlement amount of \$8,427.00 is based upon Complainant's consideration of and application of the statutory penalty factors set forth in Section 113(e), of the Act, 42 U.S.C. § 7413(e), which include the size of the business, economic impact of the penalty, the violator'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, the payment of penalties previously assessed for same violation, the seriousness of violation and such other matters as justice may require, and EPA's Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991), as indexed for inflation in keeping with 40 C.F.R. Part 19 (Adjustment to Civil Monetary Penalties for Inflation). This Consent Agreement and Final Order shall resolve all civil claims for penalties for the specific violations alleged in Section III of this Consent Agreement.
53. Respondent shall pay the civil penalty of \$8,427.00 no later than thirty (30) days after the effective date of this CAFO in order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO.
54. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
55. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this executed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
56. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. §13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid

penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

57. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. §13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
58. Thus, in accordance with the above provisions, to avoid the assessment of interest, late payment penalties, and handling charges on the penalty set forth herein, Respondent must pay the full amount of the civil penalty, in the manner directed, within thirty (30) days of the effective date of this CAFO.
59. Payment of the penalty in Paragraph 51 shall be made by cashier's check, certified check, or electronic wire transfer, Automated Clearing House ("ACH"), or an online, internet payment as specified below. All payments are payable to "Treasurer, United States of America" and shall reference the above case caption and docket number – CAA-03-2019-0061).
60. Instructions for submitting payment of the penalty using the methods, or combination of methods, described above are provided at the following EPA website addresses:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>
<http://www2.epa.gov/financial/makepayment>
61. Any payment made by any method must reference the above case caption and docket number, CAA-03-2019-0061. Within 24 hours of payment of any penalty amount, Respondent shall send copies of any corresponding check, or written notification confirming any electronic transfer through wire transfer, ACH, or internet payment, to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, to Daniel Boehmcke, Senior Assistant Regional Counsel (3RC10), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and to Erin Willard (3AP20), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029.
62. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to, this CAFO.
63. This Consent Agreement and Final Order shall constitute satisfaction of all civil claims for penalties for the specific violations alleged in Section C of this Consent Agreement. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.
64. Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in referral of this matter to the United States Attorney for

enforcement of this CAFO in the appropriate United States District Court, in accordance with Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5).

E. RESERVATION OF RIGHTS

65. This CAFO resolves only the civil penalty claims for the specific violations alleged in Section C of this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this CAFO be construed to limit the United States' authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

F. EFFECTIVE DATE

66. The effective date of this CAFO is the date on which the CAFO is filed with the Regional Hearing Clerk of EPA Region III.

G. WAIVER OF HEARING

67. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), with respect to any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the accompanying Final Order.

H. ENTIRE AGREEMENT

68. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO. Nothing in this CAFO shall be construed to affect or limit in any way the obligation of Respondent to comply with all federal, state and local laws and regulations governing any activity required by this CAFO.

I. EXECUTION

69. The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent, to the terms and conditions of this CAFO.

FOR RESPONDENT:

2/28/19

Date

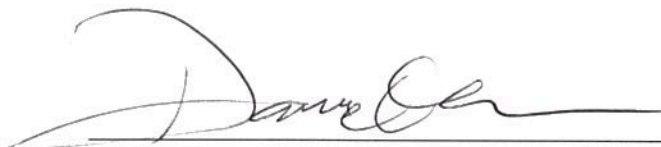


Jamie Fedor, President
Brdaric Excavating, Inc.

FOR COMPLAINANT

3/25/19

Date



Daniel Boehmcke
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III

Accordingly, the Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, ratify this Consent Agreement and issue the accompanying Final Order (CAA-03-2019-0061). The amount of the recommended civil penalty assessment is \$8,427.00.

04/10/19

Date



Cristina Fernandez, Director
Air Protection Division
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Brdaric Excavating, Inc.
500 Main Street
Swoyersville, PA 18704,**

Respondent.

EPA Docket No. CAA-03-2019-0061

FINAL ORDER

**Proceeding under Section 113(d) of the
Clean Air Act, as amended, 42 U.S.C.
§ 7413(d)**

FINAL ORDER

**U.S. EPA-REGION 3-RHC
FILED-11APR2019pm2:23**


Complainant, the Director of the Air Protection Division, U.S. Environmental Protection Agency, Region III, and Respondent, Brdaric Excavating, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representation of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Clean Air Act Stationary Source Civil Penalty Policy (1991) and the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

NOW, THEREFORE, PURSUANT TO Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Eight Thousand Four Hundred and Twenty Seven dollars (\$8,427.00), in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

April 11, 2019
Date



Joseph Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the matter of: :
: :
Brdaric Excavating, Inc. : U.S. EPA Docket CAA-03-2019-0061
500 Main Street : :
Swoyersville, PA 18704 : :
Respondent, : Proceeding under Section 113 (a) and (d)
: of the Clean Air Act
: :
Brdaric Excavating, Inc. : :
500 Main Street : :
Swoyersville, PA 18704 : :
Facility. : :
: :

CERTIFICATE OF SERVICE

I certify that on APR 11 2019, the original and one (1) copy of the foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via UPS Next Day Delivery, to:

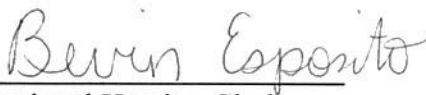
Jamie Fedor
Brdaric Excavating, Inc.
500 Main Street
Swoyersville, PA 18704

Copies served via Hand Delivery or Inter-Office Mail to:

Daniel E. Boehmcke
Senior Assistant Regional Counsel
ORC – (3RC10)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Erin Willard
Environmental Scientist
APD (3AP12)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: APR 11 2019


Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBERS: 12 A43 F7101 96876601