

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.
11. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the Administrator and the Attorney General, each through their respective delegates, have jointly determined that this administrative penalty action is appropriate.
12. Section 112 of the CAA, 42 U.S.C. § 7412, establishes a list of hazardous air pollutants (“HAPs”) and directs EPA to define the categories of sources that are required to control emissions of HAPs. Section 112(d) of the Act, 42 U.S.C. § 7412(d), directs EPA to establish National Emissions Standards for Hazardous Air Pollutants (“NESHAPs”) for sources in each category. NESHAPs established under the Act must require the maximum degree of reduction in emission of the HAPs, more commonly referred to as Maximum Available Control Technology (“MACT”).
13. HAPs are air pollutants acutely or chronically toxic to humans and harmful to the environment. HAPs are considered “hazardous” because, among other things, inhalation of them increases the risk of serious health effects, including cancer, birth, and developmental defects.

14. The EPA promulgated the General Provisions of the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for Source Categories on March 16, 1994. *See* 59 Fed. Reg. 12,430. The General Provisions are codified at 40 C.F.R. §§ 63.1-63.16.
15. The EPA initially promulgated the Subpart JJJJJ NESHAP for Industrial, Commercial, and Institutional Boilers Area Sources on March 21, 2011 (hereinafter “Subpart JJJJJ”). *See* 76 Fed. Reg. 15,554, codified at 40 C.F.R. §§ 63.11193 - 63.11237. Subsequent to litigation, EPA promulgated the final regulations for Subpart JJJJJ, effective September 14, 2016. *See* 81 Fed. Reg. 63,112.
16. 40 C.F.R. § 63.11193 states that the Subpart JJJJJ applies, in part, to the owner or operator of an industrial, commercial, or institutional boiler as defined in 40 C.F.R. § 63.11237 that is located at, or is part of, an area source of HAPs, as defined in 40 C.F.R. § 63.2, except as specified in 40 C.F.R. § 63.11195.
17. An “area source” is a stationary source of HAPs that is not a “major source,” i.e., it emits or potentially emits less than 10 tons per year of any HAP, or less than 25 tons per year of any combination of HAPs. 42 U.S.C. § 7412(a)(2).
18. A “stationary source” means “any building, structure, facility, or installation which emits or may emit any air pollutant.” *See* 42 U.S.C. §§ 7411(a) and 7412(a)(3).
19. An “affected source” is defined in 40 C.F.R. § 63.2 as “the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the Act. Each relevant standard will define the “affected source,” as defined in this paragraph unless a different definition is warranted based on a published justification as to why this definition would result in significant administrative, practical, or implementation problems and why the different definition would resolve those problems. The term “affected source,” as used in this part, is separate and distinct from any other use of that term in EPA regulations such as those implementing title IV of the Act. Affected source may be defined differently for part 63 than affected facility and stationary source in parts 60 and 61, respectively. This definition of “affected source,” and the procedures for adopting an alternative definition of “affected source,” shall apply to each section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002.” 40 C.F.R. § 63.2.
20. Subpart JJJJJ also applies in relevant part, to the following affected sources: “the affected source of this subpart is the collection of all existing industrial, commercial, and institutional boilers within a subcategory, as listed in § 63.11200 and defined in § 63.11237, located at an area source.” 40 C.F.R. § 63.11194(a)(1).
21. Subpart JJJJJ applies in relevant part, to the following affected sources: “each new or reconstructed industrial, commercial, or institutional boiler within a subcategory, as listed

in § 63.11200 and as defined in § 63.11237, located at an area source.” 40 C.F.R. § 63.11194(a)(2).

22. An affected source is an existing source if you commenced construction or reconstruction of the affected source on or before June 4, 2010. 40 C.F.R. § 63.11194(b)
23. An affected source is a new source if you commenced construction of the affected source after June 4, 2010, and the boiler meets the applicability criteria at the time you commence construction. 40 C.F.R. § 63.11194(c).
24. The Subpart JJJJJ requires owners and operators of all existing, new, or reconstructed institutional oil-fired boilers located at an “area source” to:
 - a. Submit an “Initial Notification” form no later than January 20, 2014, or within 120 days of the source becoming subject to the standard, which informs EPA that each of the owner’s or operator’s oil-fired boilers existing before the Subpart JJJJJ’s effective date is indeed subject to the Rule. See 40 C.F.R. §§ 63.11225(a)(2) and 63.9(b)(2).
 - b. Conduct, by March 21, 2014, an initial tune-up (including inspection, cleaning, repair, and emissions measurements) for each affected boiler, with biennial or once-every-five-year tune-ups thereafter (depending on boiler size, type of fuel and operating hours). See 40 C.F.R. §§ 63.11214 and 63.11223.
 - c. By March 21, 2014, have a qualified energy assessor perform, for oil-fired boilers with a heat input capacity of 10 million BTU per hour or greater, a one-time energy assessment to identify measures for improving energy efficiency. See 40 C.F.R. §§ 63.11196(a)(3), 63.11201, 63.11214(c), 63.11237, and Table 2 of Subpart JJJJJ.
 - d. By July 19, 2014, submit a “Notification of Compliance Status” report no later than 120 days after the applicable compliance date. See 40 C.F.R. § 63.11225(a)(4).
 - e. Following the initial tune-up required as of March 21, 2014, periodic tune ups are required for affected boilers, either biennially or once every five years, depending on the heat input capacity of the affected boiler. See 40 C.F.R. § 63.11223.
 - f. 40 C.F.R. § 63.11225(d) then provides that your records must be in a form suitable and readily available for expeditious review. You must keep each record for 5 years following the date of each recorded action. You must keep each record on-site or be accessible from a central location by computer or other means that instantly provide access at the site for at least 2 years after the date of each recorded action. You may keep the records off site for the remaining 3 years.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

25. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
26. Schuster’s corporate office is located at 3717A Crondall Lane, Owings Mills, Maryland 21117. Schuster is a Limited Liability Corporation incorporated in the state of Maryland.
27. Schuster is a “person” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and as that term is used in Section 113(a) and (d)(1) of the CAA, 42 U.S.C. § 7413(a) and (d)(1) and is subject to the assessment of civil penalties for the violations alleged herein.
28. Schuster is the owner and operator of the facilities located at 3625 East Monument St., Baltimore MD, 21205 (“Monument Plant”); 10782 Guilford Rd, Jessup, Maryland 20794 (“Jessup Plant”); 15121 Southlawn Lane, Rockville, MD 20850 (“Rockville Plant”); 530 East South St, Frederick, MD 21701 (“Frederick Plant”); and 5501 Van Dusen Road, Laurel, MD 20707 (“Laurel Plant”). The Monument plant has two oil-fired boilers that burn distillate fuel oil (“oil fired boilers”) with one installed in 2005 and one installed in 2007. The Jessup Plant has 2 oil-fired boilers; one was installed in 2005 and one was installed in 2009. The Rockville Plant has one oil-fired boiler which was installed in 2012. The Frederick Plant has one oil-fired boiler which was installed in 2005. The Laurel plant has one oil-fired boiler which was installed in 2004.
29. The facilities at the Monument, Jessup, Rockville, Laurel, and Frederick plants are area sources since they do not have the potential to emit more than 10 tons per year of any individual HAPs and less than 25 tons per year of any combination of HAPs, including but not limited to lead.
30. Pursuant to Section 114(a) of the CAA, 42 U.S.C. §7414(a), the EPA submitted an Information Request Letter (“IRL”) on January 11, 2021 to Schuster.
31. Schuster responded with information regarding EPA’s IRL on February 11, 2021 and March 11, 2021.

Counts I-VII

Failure to maintain required records of Compliance Status as required by Subpart JJJJJ

32. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
33. Pursuant to 40 C.F.R. § 63.11193 the facilities at the Monument, Jessup, Rockville, Laurel, and Frederick plants are subject to Subpart JJJJJ because each facility has an industrial boiler that is located at, or is part of, an area source of HAPs.

34. The oil-fired boilers at the Monument, Jessup, Rockville, Laurel, and Frederick facilities are affected sources subject to Subpart JJJJJ because all 7 oil-fired boilers are either existing or new institutional oil-fired boilers located at an “area source.”
35. Subpart JJJJJ requires owners and operators of all existing, new, or reconstructed institutional oil-fired boilers located at an “area source” to keep certain records. *See* 40 C.F.R. § 63.11225 (c). Records must be in a form suitable and readily available for expeditious review. You must keep each record for 5 years following the date of each recorded action. You must keep each record on-site or be accessible from a central location by computer or other means that instantly provide access at the site for at least 2 years after the date of each recorded action. You may keep the records off site for the remaining 3 years. *See* 40 C.F.R. § 63.11225 (d).
36. In EPA’s January 11, 2021 IRL, the EPA asked Schuster whether it kept any of the records referenced in 40 C.F.R. § 63.11225 (c) – (d) from 2017 to 2021. In response to the EPA’s January 11, 2021 IRL, Schuster stated that it did not keep any of the records referenced in 40 C.F.R. § 63.11225 (c) – (d) from 2017 to 2021.
37. Schuster’s failures to keep the records required by Subpart JJJJJ for all 7 boilers from 2017 to 2021 constitutes 7 violations of 40 C.F.R. § 63.11225 (c) – (d).
38. Schuster’s failures to comply with 40 C.F.R. § 63.11225 (c) – (d) for the affected sources are violations of Section 112 of the CAA and is subject to the assessment of penalties under Section 113 (d) of the CAA, 42 U.S.C. § 7413 (d).

CIVIL PENALTY

39. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of ONE HUNDRED AND FORTY-SEVEN THOUSAND FOUR HUNDRED AND NINETY-SEVEN dollars (\$147,497), which Respondent shall be liable to pay in accordance with the terms set forth below.
40. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), including, the following: size of the business, the economic impact of the penalty on the business, the violator’s full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, the seriousness of the violations, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991) which reflects the statutory penalty criteria and factors set forth at Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and

the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

41. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, **CAA-03-2023-0070**;
- b. All checks shall be made payable to the "United States Treasury";
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Conner Kingsley
Assistant Regional Counsel
kingsley.conner@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

42. 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

43. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
44. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. However, EPA will not seek to recover interest on any amount of the civil penalties 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).
45. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also 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.
46. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent 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).
47. If Respondent fails to make a full and complete payment of the civil penalty in accordance with this Consent Agreement and Final Order, the entire unpaid balance of the penalty shall become immediately due and owing. Failure by Respondent to pay the CAA civil penalty assessed by the Final Order in full in accordance with this Consent Agreement and Final Order may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.
48. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
49. **The parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: kingsley.conner@epa.gov for Complainant, lmcafee@bdlaw.com for Respondent.**

GENERAL SETTLEMENT CONDITIONS

- 50. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent’s knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
- 51. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about respondent’s ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

- 52. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

- 53. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA’s authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension, or modification of the requirements of the CAA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

- 54. This Consent Agreement and Final Order resolves only EPA’s claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. 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. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

55. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE


56. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

57. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: Schuster Concrete Ready Mix, LLC

Date: 8/15/2023

By: 
Lisa Sparks
Chief Administrative Officer

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Conner Kingsley
Assistant Regional Counsel
U.S. EPA – Region III

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of Clean Air Act, 42 U.S.C. §§ 7401 et seq. and the regulations promulgated thereunder.

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.

Date: _____

By: _____

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103-2029**

In the Matter of: :
 :
Schuster Concrete Ready Mix, LLC : **U.S. EPA Docket No. CAA-03-2023-0070**
3717A Crondall Lane :
Owings Mills, MD 21117 : **Proceeding under the Clean Air Act, Section**
 : **113(a)(3)(A) and (d)(1)(B)**
Respondent. :
 :
 :
 :
 :
 :
 :
 :

CERTIFICATE OF SERVICE

I certify that the foregoing *Consent Agreement and Final Order* was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the *Consent Agreement and Final Order*. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Lisa Sparks, Chief Administrative Officer
Schuster Companies
lsparks@schuster.company
3717A Crondall Lane
Owings Mills, MD 21117

Laura McAfee, Principal
Beveridge & Diamond PC
lmcafee@bdlaw.com
201 North Charles St. Suite 2210
Baltimore, MD 21201

Conner Kingsley
Assistant Regional Counsel
U.S. EPA, Region III
kingsley.conner@epa.gov

Stafford Stewart
Inspector
U.S. EPA, Region III
stewart.stafford@epa.gov

[Digital Signature and Date]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III