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August 19, 2008

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DELIVERED BY FEDERAL EXPRESS

Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency,
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Dear Sir or Madam:

Re: In the Matter of Wolf Paving Co., Inc.
Oconomowoc, Wisconsin; Docket No.
CAA-05-2008-0029

On behalf of Wolf Paving Co., Inc. ("Wolf"), I enclose an original and two copies of Wolf's Answer to the U.S. EPA's Administrative Complaint in the above-referenced matter. Please file stamp one of the enclosed copies and return it to me in the enclosed postage pre-paid envelope.

By copy of this letter, I am also serving one copy of Wolf's Answer on the U.S. EPA, through its authorized attorney, Padmavati Bending. A Certificate of Service is also enclosed.

Yours very truly,

A handwritten signature in blue ink that reads "Donald P. Gallo". The signature is written in a cursive, flowing style.

Donald P. Gallo

REINHART\2427891CAS:CAS

Encs.

cc Padmavati Bending, Esq. (with enclosures)
Sean Wolf (with enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2008-0029
)	
Wolf Paving Co., Inc.)	Proceeding to Assess a Civil Penalty
Oconomowoc, Wisconsin)	Under Section 113(d) of the Clean Air
)	Act, 42 U.S.C. § 7413(d)
Respondent.)	
_____)	

WOLF PAVING CO., INC.'S ANSWER
TO EPA'S ADMINISTRATIVE COMPLAINT

1. *This is an administrative action to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).*

ANSWER:

The allegations of this paragraph contain a legal conclusion as to which no response is required. To the extent that these allegations require a response, Wolf Paving Co., Inc. ("Wolf") admits that this is an administrative action to assess a civil penalty under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d) but denies that Wolf is liable for any civil penalty. Wolf received this Complaint on July 28, 2008.

2. *The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois.*

ANSWER:

The allegations of this paragraph contain a legal conclusion as to which no response is required. To the extent that these allegations require a response, Wolf lacks knowledge and information sufficient to form a belief as to the truth of this allegation and therefore denies same.

3. *The respondent is Wolf Paving Co., Inc. (Wolf), a corporation doing business in Wisconsin.*

ANSWER:

Wolf admits that it is a corporation doing business in Wisconsin and affirmatively states that it ceased operating the equipment of this particular asphalt plant at the location that is the subject of this Complaint in December, 2006 and

that it replaced the old equipment with updated equipment in a new asphalt plant at this location in 2007 under a new air emissions operating permit.

Statutory and Regulatory Background

4. *Under Section 111 of the Act, EPA promulgated the New Source Performance Standards (NSPS) for Hot Mix Asphalt Facilities at 40 C.F.R. §§ 60.90 through 60.93.*

ANSWER:

The Act and regulations speak for themselves and no answer is required by Wolf.

5. *The NSPS for Hot Mix Asphalt Facilities applies to each hot mix asphalt facility constructed or modified after June 11, 1973 that is used to manufacture hot mix asphalt by heating and drying aggregate and mixing with asphalt cements.*

ANSWER:

The Act and regulations speak for themselves and no answer is required by Wolf.

6. *The NSPS for Hot Mix Asphalt Facilities, at 40 C.F.R. § 60.92(a)(1), prohibits the owner or operator of an affected facility to discharge or cause the discharge into the atmosphere any gases which contain particulate matter (PM) in excess of 0.04 grains per dry standard cubic foot (gr/dscf) on and after the date on which the performance test required to be conducted under Section 60.8 is completed.*

ANSWER:

The Act and regulations speak for themselves and no answer is required by Wolf.

7. *The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.*

ANSWER:

The Act and regulations speak for themselves and no answer is required by Wolf.

8. *Section 113 (d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.*

ANSWER:

The Act speaks for itself and no answer is required by Wolf.

9. *The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violation alleged in this complaint.*

ANSWER:

Wolf lacks knowledge and information sufficient to form a belief as to the truth of this allegation and therefore denies same. Wolf affirmatively states an administrative penalty action is not appropriate against Wolf.

General Allegations

10. *Respondent owned and operated a batch, hot mix asphalt plant at Highway 18 and County Road C in Genesee, Wisconsin until January 2007.*

ANSWER:

Wolf denies this allegation and affirmatively states that it ceased operating the equipment at the location that is the subject of this Complaint in December, 2006 and that it replaced the old equipment with updated new equipment in 2007.

11. *The Genesee facility was subject to the NSPS for Hot Mix Asphalt Facilities.*

ANSWER:

Wolf admits that at the time covered by the allegations in Count 1 of the Complaint, the Genesee facility was subject to the NSPS for Hot Mix Asphalt Facilities but denies that it is responsible or liable for the facts and circumstances alleged in the Complaint.

Count 1

12. *Complainant incorporates paragraphs 1 through 11 of the Complaint, as if set forth in this paragraph.*

ANSWER:

Wolf incorporates by reference its answers to paragraphs 1 through 11, as if set forth in this paragraph.

13. *In response to a 114 Request, on April 30, 2007, Respondent submitted to EPA the results of all performance tests it had conducted at the Genesee facility since January 1, 2003.*

ANSWER:

Wolf denies this allegation and affirmatively states that on April 30, 2007 Wolf sent the EPA a letter in accordance with EPA's information request that enclosed all of the compliance test reports for the particulate emissions tests performed at its asphalt plant in Genesee, Wisconsin since January 1, 2003.

14. *During a performance test Respondent conducted on October 13, 2004, the average PM emission rate was 0.08 gr/dscf, which exceeds the NSPS limit by 100 percent.*

ANSWER:

Wolf admits that it conducted a test on October 13, 2004 and denies the remaining allegations. Wolf affirmatively states that:

- a. the October 13, 2004 test was a stack test;
- b. Wolf conducted blacklight tests on the filter bags at issue and recorded pressure drop data before the October 13, 2004 stack test, both of which indicated that the system would pass the stack test;
- c. the plant was shut down for the season on December 14, 2004;
- d. an early 2005 analysis determined that Wolf would be a good candidate for drycleaning its filter bags;
- e. Wolf paid \$7,459.00 for on-site drycleaning of such filter bags; and,
- f. April 2005 black light testing and pressure drop monitoring indicated that Wolf's system was compliant.

15. *During a performance test Respondent conducted on June 22, 2005, the average PM emission rate was 0.049 gr/dscf, which exceeds the NSPS by 22.5 percent.*

ANSWER:

Wolf admits that it conducted a test on June 22, 2005 and denies the remaining allegations. Wolf affirmatively states that:

- a. the June 22, 2005 test was a stack test;
- b. June 22, 2005 was the first available stack test date;
- c. Wolf did not learn that it did not pass the June 22, 2005 stack test until early August 2005;

- d. Wolf ordered new filter bags at that time;
- e. the filter bags' manufacturer delayed shipping the bags ordered by Wolf due to high military demand for the bag material in Iraq;
- f. the filter bags were installed upon their receipt by Wolf in late August; and,
- g. the filter bags cost \$18,650.

16. *Respondent did not demonstrate compliance with the NSPS limit until September 14, 2005.*

ANSWER:

Wolf denies this allegation and affirmatively states that its September 14, 2005 compliance test passed by a wide margin.

17. *Respondent's failure to maintain continuous compliance with the PM limit of the NSPS for Hot Mix Asphalt Facilities is a violation of the NSPS for Hot Mix Asphalt Facilities and Section 111(e) of the Act, 42 U.S.C. § 7411(e).*

ANSWER:

Wolf denies this allegation.

18. *On December 12, 2007, EPA issued a Finding of Violation (FOV) to Respondent regarding the violations described herein.*

ANSWER:

Wolf admits that EPA issued a FOV on December 12, 2007 but denies the remaining allegations and denies that it is liable or responsible for the violations alleged by EPA in the FOV.

19. *On January 29, 2008, EPA and Respondent held a conference to discuss the December 12, 2007 FOV.*

ANSWER:

Wolf admits that EPA and Wolf held a conference on January 29, 2008 to discuss the December 12, 2007 FOV but denies that it is liable or responsible for the violations alleged by EPA in the FOV.

Proposed Civil Penalty

20. *Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint of \$114,740.*

ANSWER:

Wolf admits that Complainant is proposing a \$114,740 civil penalty against Wolf for the violations alleged in the Complaint but denies that it is liable or responsible for the violations alleged by EPA. Wolf affirmatively states that the \$114,740 civil penalty sought by Complainant is inappropriate based on the facts of this case.

21. *Complainant determined the proposed civil penalty according to the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e). Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991 (penalty policy). Enclosed with this Complaint is a copy of the penalty policy.*

ANSWER:

Wolf lacks knowledge and information sufficient to form a belief as to the truth of this allegation and therefore denies same. Wolf affirmatively states that the civil penalty sought by Complainant in the amount of \$114,740 is not in conformity with the penalty policy and is inappropriate based upon the facts alleged in this case. Wolf further affirmatively states that the Complainant failed to attach a copy of the penalty policy to the Complaint that was served on Wolf as is alleged by the Complainant in the last sentence of paragraph 21.

22. *Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.*

ANSWER:

Wolf lacks knowledge and information sufficient to form a belief as to the truth of this allegation and therefore denies same. Wolf affirmatively states that the Complainant should adjust the proposed penalty downward appropriately and recognize the applicability of downward adjustment factors, including, but not limited to: Wolf's size, high degree of cooperation, minimal history of noncompliance, and lack of environmental damage.

Rules Governing This Proceeding

23. *The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with this Complaint is a copy of the Consolidated Rules.*

ANSWER:

The allegations of this paragraph contain a legal conclusion as to which no response is required. To the extent that these allegations require a response, Wolf admits that *The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), at 40 C.F.R. Part 22, govern administrative assessment of civil penalties but denies that it is liable or responsible for the violations alleged by EPA. Wolf affirmatively states that the \$114,740 civil penalty sought by Complainant is inappropriate based on the facts of this case. Wolf further affirmatively states that the Complainant failed to attached a copy of the Consolidated Rules to the Complaint that was served on Wolf as alleged in the last sentence of Paragraph 23.

Filing and Service of Documents

24. *Respondent must file with the EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:*

*Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604*

ANSWER:

No response is required by Wolf.

25. *Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Padmavati Bending, Associate Regional Counsel to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Bending at (312) 353-8917. Ms. Bending's address is:*

*Padmavati Bending, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604*

ANSWER:

No response is required by Wolf. However, pursuant to this paragraph and paragraph 30 (requiring Respondent to file the original written Answer and one copy with the Regional Hearing Clerk), Wolf is filing its original written Answer

and one copy with the Regional Hearing Clerk and is serving Complainant's copy on Ms. Bending.

Penalty Payment

26. *Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America," and by delivering the check to:*

For checks sent by regular U.S. Postal Service mail:

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

Or, for checks sent by express mail:

*U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101*

ANSWER:

No response is required by Wolf.

27. *Respondent must include the case name, docket number, and billing document number of the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to the Regional Hearing Clerk and Ms. Bending at the address given above, and to:*

*Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604*

ANSWER:

No response is required by Wolf.

Answer and Opportunity to Request a Hearing

28. *If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to a judgment as a matter of law, Respondent may request a hearing before the Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.*

ANSWER:

Wolf hereby requests a hearing before the Administrative Law Judge on the following matters, which are included in this Answer to Complaint as defenses, affirmative or otherwise:

- a. the material facts alleged in the Complaint;
- b. the Complainant's interpretation of the NSPS for Hot Mix Asphalt Facilities as set forth in the Complaint;
- c. the application of the NSPS for Hot Mix Asphalt Facilities to Wolf;
- d. the interpretation of the NSPS for Hot Mix Asphalt Facilities by Region V of the EPA and the Complainant's application of this regulation to Wolf is arbitrary and capricious and violates Wolf's due process and equal protection rights under the United States Constitution.
- e. the appropriateness of the proposed penalty set forth by the Complainant in paragraph 20 of this Complaint under the penalty policy and applicable law based on how the penalty policy and applicable law have been interpreted and applied by courts of competent jurisdiction and the Complainant;
- f. whether the penalty proposed by the Complainant exceeds what justice requires in this case; and,
- g. whether the alleged violations asserted in the Complaint are de minimis.

29. *In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period extends to the next business day.*

ANSWER:

No response is required by Wolf.

30. *To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address given above.*

ANSWER:

No response is required by Wolf. However, pursuant to this paragraph and paragraph 25 (authorizing Ms. Bending to receive any answer and subsequent legal document that Respondent serves in this Proceeding), Wolf is filing its original written Answer and one copy with the Regional Hearing Clerk and is serving Complainant's copy on Ms. Bending.

31. *Respondent's written Answer must clearly and directly admit, deny or explain each of the factual allegations in the Complaint, or must state clearly that Respondent has no knowledge of a particular factual allegation. Where the Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.*

ANSWER:

No response is required by Wolf.

32. *Respondent's Answer must also state:*
- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;*
 - b. the facts that Respondent disputes;*
 - c. the basis for opposing the proposed penalty;*
 - d. whether Respondent requests a hearing.*

ANSWER:

No response is required by Wolf.

33. *If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.*

ANSWER:

No response is required by Wolf.

Settlement Conference

34. *Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts alleged in the Complaint and to discuss a settlement. To request an informal settlement conference, Respondent may contact Ms. Bending at the address or phone number specified in paragraph 25 above.*

ANSWER:

Wolf hereby reiterates its July, 2008 request for an informal settlement conference to discuss the facts alleged in the Complaint and to discuss a settlement.

35. *Respondent's request for an informal settlement conference does not extend the 30-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.*

ANSWER:

No response is required by Wolf.

Continuing Obligation to Comply

36. *Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.*

ANSWER:

No response is required by Wolf.

Dated this 19 day of August, 2008.

Reinhart Boerner Van Deuren, s.c.
N16 W23250 Stone Ridge Drive
P.O. Box 2265
Waukesha, WI 53187-2265
262-951-4500


Donald P. Gallo
WI State Bar ID No. 1001278
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WI State Bar ID No. 1017769
Attorneys for Wolf Paving Co., Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2008-0029
)	
Wolf Paving Co., Inc.)	Proceeding to Assess a Civil Penalty
Oconomowoc, Wisconsin)	Under Section 113(d) of the Clean Air
)	Act, 42 U.S.C. § 7413(d)
Respondent.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that Respondent Wolf Paving Co., Inc.'s Answer to EPA'S
Administrative Complaint was sent this day by Federal Express overnight delivery
service to the addressees indicated below:

Original and two copies to:

Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

One copy to:

Padmavati Bending, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Dated this 19th day of August, 2008.

Reinhart Boerner Van Deuren, s.c.
N16 W23250 Stone Ridge Drive
P.O. Box 2265
Waukesha, WI 53187-2265
262-951-4500


Theresa M. Skrove

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