

In the Matter of: Monumental Concrete, LLC

EPA Docket No. CAA-03-2021-0030

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
Monumental Concrete, LLC	:	U.S. EPA Docket No. CAA-03-2021-0030
3 DC Village Lane	:	
Washington, DC 20032	:	Proceeding under Section 113(a) and (d) of the
	:	Clean Air Act, 42 U.S.C. § 7413(a), (d)
Respondent.	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Monumental Concrete, LLC (“Respondent”) (collectively the “Parties”), pursuant to Section 113(a)(1)(B), (a)(3)(A), (d)(1)(A), and (d)(1)(B) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(a)(1)(B), (a)(3)(A), (d)(1)(A), and (d)(1)(B) and 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. Section 113(a) and (d) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(a) and (d) authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under the CAA for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency 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. Except as expressly provided herein, including but not limited to Paragraph 5 regarding admission to jurisdictional allegations, this waiver is not intended to nor should it be interpreted to be an admission of fact, law, or waiver of defenses in any other proceeding with the parties, including any other proceedings involving the Complainant.
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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. 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.
13. Respondent, Monumental Concrete, LLC (hereinafter "Respondent"), is a Maryland corporation which has been registered to do business in the District of Columbia since 2011. Respondent is and, at all times relevant to the violations alleged herein, was the owner and operator of a ready mix concrete batch plant with associated 2.7 MMBTU/hr No. 2 fuel oil fired seasonal hot water heater (hereinafter "Facility") (NAICS 32730) at 3 DC Village Lane, Washington, DC 20032.
14. Respondent 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.

15. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, the Administrator of EPA, approved the applicable District of Columbia State Implementation Plan (“District of Columbia SIP”), which incorporates Title 20 of the District of Columbia’s municipal regulations.
16. Respondent is, and at all times relevant to the violations alleged herein, was subject to the following requirements of the District of Columbia SIP: Sections 200.1 and 200.2 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR), as approved by EPA.
17. Pursuant to 20 DCMR § 200.1, “[a] permit from the Department shall be obtained before any person shall cause, suffer, or allow the construction of a new stationary source, or the modification of an existing stationary source, or the installation or modification of any air pollution control device on a stationary source.”
18. On December 22, 2011, the District of Columbia Department of Energy and Environment (“DOEE”) issued Respondent a DC Chapter 2 Permit #6550 minor source operating permit (“Permit”), which expired on December 22, 2014.
19. On April 7, 2015, the DOEE issued renewal Permit #6550-R1 to Respondent, which expired on April 6, 2020.
20. Pursuant to 20 DCMR § 200.5, “[e]ach owner or operator of a stationary source or device for which a permit is required shall timely file with the Department the appropriate application, including applications for renewal of any construction or operating permit, if construction activities or operations are to continue beyond the expiration date of an existing permit.”
21. On January 14, 2020, Respondent submitted to the DOEE, a DC Chapter 2 Permit #6550-R1/minor source operating permit renewal application.
22. Pursuant to 40 CFR § 63.11193, “[a] person is subject to Subpart JJJJJJ if he or she “own[s] or operate[s] an industrial, commercial, or institutional boiler as defined in § 63.11237 that is located at, or is part of, an area source of hazardous air pollutants (HAP), as defined in § 63.2, except as specified in § 63.11195.”
23. The Facility’s associated 2.7 MMBTU/hr No. 2 fuel oil fired seasonal hot water heater, installed in 2011, is and, at all times relevant to the violations alleged herein, was located at, or is a part of, an “area source” of hazardous air pollutant (HAP) emissions as that term is defined in Section 112(a)(2) of the CAA, 42 U.S.C. § 7412(a)(2).
24. On September 18, 2019, EPA conducted a CAA compliance inspection at the Facility (“Inspection”). During this inspection, EPA obtained information and documents from Respondent regarding its compliance with certain of the requirements of the Permit at the Facility.

25. On November 7, 2019, pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, EPA sent Respondent an Information Request Letter (“IRL”), requesting additional information and documents. Respondent responded to EPA’s IRL in a letter dated December 12, 2019.
26. On January 8, 2020, EPA requested further information by email. Respondent provided EPA with a supplemental response by letter dated January 17, 2020.
27. By letter dated April 1, 2020, EPA issued Respondent a notice of violation under Section 113(a)(1) and (4) of the CAA, 42 U.S.C. § 7413(a)(1) and (4).
28. By letter dated April 16, 2020, Respondent responded to the April 1, 2020 notice of violation and denied each alleged violation.

Count I

Failure to Operate Within the Hours Per Day Allowed Under Permit

29. The allegations of Paragraphs 1 through 28 of this Consent Agreement are incorporated herein by reference.
30. Section III.a of Monumental Concrete’s Permit states, “[t]he batch concrete plant shall be operated for no more than one shift [8] hours per day, six days a week, and three hundred (300) days per year per 12 month rolling period.”
31. Between September 18, 2016 and December 12, 2019, Respondent operated its concrete batch plant greater than 8 hours per day on 66 days.
32. Respondent’s failure to comply with Section III.a of its Permit constitutes violations of the applicable permit, the District of Columbia SIP, and Section 110 of the CAA, 42 U.S.C. § 7410.
33. In failing to comply with Section 110 of the CAA, 42 U.S.C. § 7410, Respondent is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

Count II

Failure to Operate Dust Collector Within Prescribed Differential Pressure Range

34. The allegations of Paragraphs 1 through 33 of this Consent Agreement are incorporated herein by reference.
35. Section III.d of Monumental Concrete’s Permit states, “the proper operation of the baghouse shall be demonstrated when the differential pressure across the bags is maintained between 4 and 6 inches of water.”
36. From at least October 1, 2017 through November 7, 2019, Respondent failed to properly operate the baghouse, as demonstrated by the failure to maintain the differential pressure across the baghouse between 4 and 6 inches of water on 405 days.

37. Respondent's failure to comply with Section III.d of its Permit constitutes violations of the applicable permit, the District of Columbia SIP, and Section 110 of the CAA, 42 U.S.C. § 7410.
38. In failing to comply with Section 110 of the CAA, 42 U.S.C. § 7410, Respondent is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

Count III
Failure to Record Differential Pressure Readings

39. The allegations of Paragraphs 1 through 38 of this Consent Agreement are incorporated herein by reference.
40. Section V.a of Monumental Concrete's Permit states, "[t]he Permittee shall record in a log the differential pressure reading of the magnehelic pressure gauge at least once each day, during operation of the equipment to ensure compliance with the operational requirements of Conditions III(b), (c), (d) of this permit."
41. From at least September 18, 2016 through October 1, 2017, Respondent failed to record the differential pressure of the magnehelic pressure gauge for the fabric filter dust collectors and baghouse on 378 days.
42. Respondent's failure to comply with Section V.a of its Permit constitute violations of the applicable permit, the District of Columbia SIP, and Section 110 of the CAA, 42 U.S.C. § 7410.
43. In failing to comply with Section 110 of the CAA, 42 U.S.C. § 7410, Respondent is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

Count IV
Failure to Properly Record Total Hours of Operation

44. The allegations of Paragraphs 1 through 43 of this Consent Agreement are incorporated herein by reference.
45. Section V.b of Monumental Concrete's Permit states, "[t]he Permittee shall keep a record of the hours of operation of the ready mix concrete batch plant at the site each day. This shall be kept by keeping a log, updated daily, of each start and stop time of the unit with a sum of the total hours of operation that day. Additionally, the Permittee shall keep a record of the total hours of operation in a 12-month rolling sum format, updated monthly for the previous 12 calendar months."
46. From at least September 18, 2016 through December 31, 2016, Respondent failed to keep

a record of the hours of operation of the ready mix concrete batch plant in a 12-month rolling sum format and failed to record each start and stop time of the unit with a sum of the total hours of operation each day on 104 days.

47. Respondent's failure to comply with Section V.b of its Permit constitutes violations of the applicable permit, the District of Columbia SIP, and Section 110 of the CAA, 42 U.S.C. § 7410.
48. In failing to comply with Section 110 of the CAA, 42 U.S.C. § 7410, Respondent is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

CIVIL PENALTY

49. 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 Forty-Nine Thousand Eight Hundred and Ninety-Nine Dollars (\$149,899)** which Respondent shall be liable to pay in accordance with the terms set forth below.
50. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in the Clean Air Act, Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), including, the following: the 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 violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. 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 (October 25, 1991), which reflects the statutory penalty criteria and factors set forth at Section 113(e)(1) 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.
51. 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-03-2021-0030;
 - 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 979077
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 to:

Hannah G. Leone
Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029
Leone.hannah@epa.gov

52. 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.
53. 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 debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
54. 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 that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. 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).
55. 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). Pursuant to Appendix 2 of EPA's *Resources*

Management Directives – Case 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.

56. 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).
57. 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.
58. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

59. 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.
60. 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

61. 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

62. 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

63. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in Counts I through IV of this Consent Agreement and Final Order, through the date of the Notice of Violation, as specified in Paragraph 27. 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

64. 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

65. 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

66. 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: MONUMENTAL CONCRETE, LLC

Date: 2/8/21

By: 
Becky McCollum
General Manager

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and 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.

Date: _____

By: _____

Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: _____

By: _____

Hannah G. Leone
Assistant Regional Counsel
U.S. EPA – Region III

FINAL ORDER

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

In the Matter of:

**Monumental Concrete, LLC
3 DC Village Lane
Washington, DC 20032**

Respondent.

EPA Docket No. CAA-03-2021-0030

FINAL ORDER

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

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Monumental Concrete, LLC 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, 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 upon the representations 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 (October 25, 1991) and the statutory factors set forth in the Clean Air Act, Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1) and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19.

NOW, THEREFORE, PURSUANT TO Sections 113(a)(1)(B), (a)(3)(A), (d)(1)(A), and (d)(1)(B) of Clean Air Act, 42 U.S.C. §§ 7413(a)(1)(B), (a)(3)(A), (d)(1)(A), and (d)(1)(B), and Section 22.18(b)(3) of the Consolidated Rules of Practice, 40 C.F.R. 22.18(b)(3), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **ONE HUNDRED**

In the Matter of: Monumental Concrete, LLC

EPA Docket No. CAA-03-2021-0030

FORTY-NINE THOUSAND EIGHT HUNDRED AND NINETY-NINE DOLLARS (\$149,899), in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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