



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

AUG 16 2011

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jason Radandt, President
Sheboygan Sand and Gravel, Inc.
1800 Johnston Drive
Manitowoc, Wisconsin 54220

Re: In the Matter of: Sheboygan Sand and Gravel, Incorporated
Docket No. **CAA-05-2011-0048**

Dear Mr. Radandt:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Sheboygan Sand and Gravel, Inc., docket no. **CAA-05-2011-0048**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on AUG 18 2011

Pursuant to paragraph 51 of the CAFO, Sheboygan Sand and Gravel, Inc. must pay the civil penalty by August 31, 2011. Your check must display the case name, case docket number **CAA-05-2011-0048** and the billing document number **2751103A07**.

Please direct any question regarding this case to Sherry Estes (312)-886-7164.

Sincerely,

A handwritten signature in cursive script that reads "Sara Breneman".

Sara Breneman
Air Enforcement and Compliance Assurance Branch,
MI/WI

Enclosure

cc: William Baumann, WDNR
Richard Wulk, WDNR

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. # CAA-05-2011-0048
)	
Sheboygan Sand and Gravel, Incorporated)	Proceeding to Assess a Civil Penalty
Facility located in Kiel, Wisconsin)	Under Section 113(d) of the Clean Air Act
)	42 U.S.C. § 7413(d)
)	
<u>Respondent.</u>)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is Sheboygan Sand and Gravel, Incorporated (SSG), a corporation doing business in Wisconsin.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

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U.S. EPA REGION 5
ADMINISTRATIVE CLERK

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, each State is responsible for submitting to EPA for approval an implementation plan which specifies how the State will achieve, maintain, and enforce all primary and secondary National Ambient Air Quality Standards (NAAQS) in the State.

10. Under Section 110(a) of the Act, each State Implementation Plan (SIP) must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. SIPs must include enforceable emission limitations, control measures, and schedules for compliance. Upon EPA's approval of a SIP, the plans become independently enforceable by the federal government, as stated under Section 113(a) of the Act, 42 U.S.C. § 7413(a).

11. On January 18, 1995, EPA approved Wisconsin Administrative Code NR 400, NR 406, and NR 407 as part of the federally enforceable SIP for Wisconsin. 60 Fed. Reg. 3538 (January 18, 1995). 40 C.F.R. §52.2570(c)(75) and (76).

12. NR 400.02 states that the definition of “stationary source” “has the meaning given in Section 144.30(23) of the Wisconsin Statutes.”

13. Section 144.30 has been renumbered to be Section 285.01(41) of the Wisconsin Statutes. Under Section 285.01(41), “stationary source” means “any facility, building, structure or installation that directly or indirectly emits or may emit an air contaminant only from a fixed location. A stationary source includes an air contaminant source that is capable of being transported to a different location.”

14. NR 400.02(55) states a “modification” means “any physical change in, or change in the method of operation of, a stationary source that increases the amount of emissions of an air contaminant or that results in the emission of an air contaminant not previously emitted. A modification does not include any changes identified in s. NR 406.04(4).”

15. Wisconsin SIP construction permit requirement NR 406.03 states that “no person may commence construction, reconstruction, replacement, relocation or modification of a stationary source unless the person has a construction permit for the source or unless the source is exempt from the requirement to obtain a permit under § 144.391(5) Wis. Stats. (now renumbered as § 285.60(1)(a) Wis. Stats.), or under this chapter.” The statutory exemptions are not applicable here.

16. NR 406.04(2) states “no construction permit is required prior to commencing construction, reconstruction, replacement, relocation or modification of a direct source if all of the following conditions are met: . . . (c) The maximum theoretical emissions from the source for particulate matter, nitrogen oxides or volatile organic compounds do not exceed 5.7 pounds per hour for each air contaminant.”

17. NR 407.01 states that chapter NR 407 “applies to all stationary sources which are required under s§ 144.391(6) Wis. Stats. (now §285.60(1)(b)), to obtain an operation permit.”

18. Section 285.60 of the Wisconsin statutes states that “no person may operate a new or modified source unless the person has an operation permit” from the Wisconsin Department of Natural Resources (WDNR). The exemptions to that requirement are not applicable here.

19. NR 400.02(70) defines “portable source” as “any facility, installation, operation or equipment which may directly result in the emission of any air contaminant only while at a fixed location but is capable of being transported to a different location. (e.g., portable asphalt plant, portable package boiler, portable air curtain destructor, etc.). As a type of direct stationary source, a modified portable source or a portable source, which has never received a plan approval or air pollution control permit, is subject to the requirements of chs. NR 406, 407, and 408.”

20. 40 C.F.R. Part 60, the New Source Performance Standards (NSPS), set forth general regulations in Subpart A, §§ 60.1 to 60.19, which are applicable across the various industry groups subject to Part 60. Additional regulations specific to Nonmetallic Mineral Processing Plants are set forth in Subpart OOO, §§ 60.670-60.676.

21. EPA promulgated NSPS Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants (Subpart OOO), on August 1, 1985, 51 Fed.Reg. 31337, amended at 54 Fed. Reg. 6680 (February 14, 1989), and further amended at 74 Fed. Reg. 19309 (April 28, 2009).

22. A “stationary source” under the NSPS “means any building, structure, facility, or installation which emits or may emit any air pollutant.” 40 C.F.R. § 60.2.

23. An “affected facility” under the NSPS “means, with reference to a stationary source, any apparatus to which a standard is applicable.” 40 C.F.R. § 60.2.

24. Subpart OOO applies “to the following affected facilities,” which commenced construction, reconstruction, or modification after August 31, 1983, “in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station.” 40 C.F.R. § 60.670.

25. An “owner or operator” under the NSPS “means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.” 40 C.F.R. § 60.2.

26. Until April 28, 2009, the NSPS, at 40 C.F.R. § 60.7(a)(1), and 40 C.F.R. § 60.670(f), required owners or operators subject to the Subpart OOO standards to furnish, to the Administrator, written notification of the date construction or reconstruction of an affected facility is commenced, postmarked no later than 30 days after such date.

27. As of April 28, 2009, the Subpart OOO standards waived this general notification requirement set forth under 40 C.F.R. § 60.7(a)(1) for facilities covered by the Subpart. 74 Fed. Reg. 19309 (April 28, 2009).

28. The NSPS, at 40 C.F.R. § 60.7(a)(3) and at 40 C.F.R. § 60.676(i), together require owners or operators subject to the NSPS to furnish to the Administrator a written notification of the actual date of initial startup of an affected facility, postmarked within 15 days after such date. 40 C.F.R. § 60.676(i)(2) states that for portable aggregate processing plants, the notification shall include both the home office and the current address or location of the portable plant.

29. The NSPS, at 40 C.F.R. § 60.8(a) and § 60.672, require that “within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not more than 180 days after initial startup” of the facility, the owner or operator of the facility shall conduct performance test(s) and furnish the Administrator a written report of the results of the performance test(s).

30. Under 40 C.F.R. § 60.4 and 40 C.F.R. § 60.676(k), the written notifications described in Paragraphs 26, 28 and 29 above are to be submitted to WDNR.

31. 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

32. 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 violations alleged in this CAFO.

Factual Allegations and Alleged Violations

33. At all times relevant to this Notice, SSG was the owner and/or operator of a nonmetallic mineral processing plant located in Kiel, Wisconsin.

34. The primary crusher, cone crusher, sand screw and screen in operation at the SSG’s portable nonmetallic mineral processing plant emit or may emit particulate matter.

35. On October 22, 2009, pursuant to the “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations” (Audit Policy), SSG disclosed that a portable screen was in operation at the facility on October 22, 2009, and had been replaced in 1998.

36. SSG’s October 22, 2009 disclosure stated that the facility is subject to the NSPS for Nonmetallic Mineral Processing Plants, Subpart OOO. Under 40 C.F.R. §60.670(a)(2), portable sand and gravel plants subject to the Subpart OOO standards have production capacities greater than 150 tons per hour.

37. Applying EPA’s standard guidance, AP-42, Fifth Edition, *Compilation of Air Pollutant Emission Factors, Volume I, Stationary Point and Area Sources*, the maximum theoretical emissions for particulate matter from SSG’s portable nonmetallic mineral processing plant exceed 5.7 pounds per hour.

38. SSG’s portable nonmetallic mineral processing plant is subject to the operation permit requirements set forth in Wisconsin Administrative Code NR 407, incorporated into the Wisconsin SIP at 60 Fed. Reg. 3538.

39. SSG did not obtain an operation permit required by the federally enforceable Wisconsin SIP before beginning operation of its stationary sources located at its nonmetallic mineral processing plant.

40. The sources listed below were in violation of NR 407 and the Wisconsin SIP because they were constructed and in operation before receiving the necessary operation permits:

- a. Primary Crusher, Serial No.C-54047
- b. Cone Crusher with El-Jay Screen Serial No. 34J0385
- c. AC Screen, Serial No. C54084
- d. Sand screw, Serial No. 13036
- e. Chieftan Power Screen

41. Each of SSG's failures to obtain an operation permit for each separate piece of equipment is an additional separate violation of the Wisconsin SIP.

42. SSG's operations at its Kiel, Wisconsin facility prior to December 17, 2009 are in violation of NR 407 and the Wisconsin SIP.

43. SSG's plant is subject to the requirements at 40 C.F.R. § 60.7(a)(1) and (3), § 60.8(a), and 40 C.F.R. Part 60, Subparts A and OOO, because affected facilities at the plant were modified or constructed and began operation after August 31, 1983.

44. SSG's initial compliance testing was conducted on June 28, 2010. Performance testing did not occur within 180 days of initial start-up after the affected facilities were constructed or modified.

45. SSG violated the NSPS at 40 C.F.R. § 60.8(a) and § 60.672 because the company did not conduct performance tests on the affected facilities at the plant, listed as items a through d in Paragraph 44 above, within 180 days of the initial startup. Each failure to conduct a performance test of the affected facilities listed above in Paragraph 44 is a separate violation of 40 C.F.R. § 60.8(a) and § 60.672.

46. SSG was notified of these violations in a Notice of Violation/Finding of Violation (NOV/FOV) issued by EPA on September 27, 2010.

47. On September 11, 2009 one of Radandt's facilities received an NOV/FOV for failure to obtain construction and operation permits in accordance with NR 406, and NR 407 of the Wisconsin SIP, and failure to notify for construction commencement and initial start-up, and failure to performance test in accordance with NSPS Subparts A and OOO.

48. On or about July 22, 2010, Region 5, in consultation with EPA HQ, determined that SSG's October 22, 2009 disclosure did not meet the requirement for prompt disclosure set forth in the Audit Policy, especially given its close relationship with Fred Radandt Sons, Incorporated. (Radandt). Radandt and SSG are owned by members of the same family, headquartered at the same address, and share officers.

49. SSG's self disclosure under the Act only addressed the status of the portable screen under the NSPS; therefore, it did not address the majority of the violations set forth in the September 27, 2010 NOV/FOV. In addition, the Radandt facility was inspected by WDNR inspector James Crawford in 2007, and he told Radandt during that inspection that the company needed to apply for construction and operation permits for its facility, and that the facility was subject to NSPS Subpart OOO. This was documented in his inspection report of September 10, 2007, a copy of which was sent to Joshua Radandt. Since SSG's disclosure did not occur until October 2009 after EPA sent the NOV/FOV for the Radandt facility, given the close relationship between Radandt and SSG, SSG's self disclosure did not meet the "prompt disclosure" requirement of the Audit Policy.

Civil Penalty

50. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case and cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$40,000.

51. By August 31, 2011, Respondent must pay a \$40,000 civil penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America," by regular U.S. Postal Service mail, to:

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

or by express mail to:

**U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101**

The check must note the case name, docket number of this CAFO and the billing document number.

52. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

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

**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 Blvd.
Chicago, IL 60604**

Sherry Estes, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

53. This civil penalty is not deductible for federal tax purposes.

54. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

55. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

56. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

57. The CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

58. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in Paragraph 56, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

59. Respondent certifies that it is complying fully with 40 C.F.R. §§ 60.670 through 60.676, and NR 406, and NR 407 of the Wisconsin SIP.

60. This CAFO constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

61. The terms of this CAFO bind Respondent, its successors, and assigns.

62. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

63. Each party agrees to bear its own costs and attorneys' fees in this action.

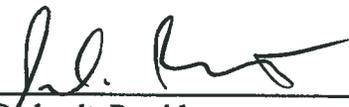
64. This CAFO constitutes the entire agreement between the parties.

IN THE MATTER OF:

Sheboygan Sand and Gravel, Incorporated; Kiel, Wisconsin

Sheboygan Sand and Gravel, Incorporated, Respondent

1 AUG 11
Date



Jason Radandt, President
Sheboygan Sand and Gravel, Incorporated

IN THE MATTER OF:

Sheboygan Sand and Gravel, Incorporated; Kiel, Wisconsin

United States Environmental Protection Agency, Complainant

8/15/11
Date


Cheryl L. Newton
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

Sheboygan Sand and Gravel, Incorporated

Docket No.CAA-05-2011-0048

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

8-16-11

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Fred Radandt Sons, Incorporated
Docket No. CAA-05-2011-0048

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA 05 2011 0048 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed a second original copy by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Jason Radandt, President
Sheboygan Sand and Gravel, Incorporated
1800 Johnston Drive
Manitowoc, Wisconsin 54220

I certify that I mailed copies of the CAFO by first-class mail, addressed as follows:

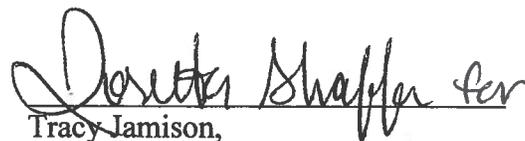
William Baumann, Chief, Compliance and Enforcement Section
Wisconsin Department of Natural Resources
Bureau of Air Management
101 South Webster Street
P.O. Box 7921 (AM/7)
Madison, Wisconsin 53702

Richard Wulk, Supervisor - North Team
Northeast Region
Wisconsin Department of Natural Resources
Bureau of Air Management
2984 Shawano Avenue
Green Bay Wisconsin 54313-6727

I also certify that I delivered a copy of the CAFO by intra-office mail, addressed as follows:

Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard/Mail Code C-14J
Chicago, Illinois 60604

On the 18 day of August 2011.



Tracy Jamison,
Office Automation Assistant
AECAS (PAS)

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7670 0221

RECEIVED
REGIONAL INSPECTION CLERK
U.S. EPA REGION 5
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