

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

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IN RE:)
)
)
KILAUEA CRUSHERS, INC.,)
)
)
RESPONDENT)
_____)

DOCKET NO. CAA-9-2011-0004
CONSENT AGREEMENT AND
FINAL ORDER

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA Region IX”) and Kilauea Crushers, Inc. (“Respondent”) agree to settle this case initiated under the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. §§ 7401 et seq., and consent to the entry of this Consent Agreement and Final Order (“CAFO”).

A. AUTHORITY AND PARTIES

1. EPA initiated this civil administrative proceeding for the assessment of a civil administrative penalty pursuant to Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, by issuing a Complaint and Notice of Opportunity for Hearing (the “Complaint”) against Respondent on September 27, 2011.
2. On February 27, 2012, Respondent filed its Answer to the Complaint.
3. On August 1, 2012, Complainant filed a Motion for Leave to File First Amended

Complaint (the "Motion") accompanied by a First Amended Complaint and Notice of Opportunity for Hearing (the "Amended Complaint").

4. On August 22, 2012, the Presiding Officer granted the Motion and deemed the Amended Complaint to be filed and served on the date of the order.
5. The Amended Complaint alleges that Respondent violated MCAQD Regulation III, Rule 316, as incorporated into the State Implementation Plan for Arizona pursuant to Section 110 of the Act, 42 U.S.C. § 7410.
6. EPA Region IX and Respondent have agreed to resolve and fully settle this civil administrative proceeding arising under the Act by executing this CAFO.

B. RESPONDENT'S ADMISSIONS

7. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the Amended Complaint; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.C of this CAFO; (iv) waives any right to contest the allegations contained in the Amended Complaint; and (v) waives the right to appeal the proposed final order contained in this CAFO.

C. CIVIL ADMINISTRATIVE PENALTY

8. Respondent hereby consents to the assessment of a civil penalty in the amount of NINETEEN THOUSAND THREE HUNDRED AND TWENTY-ONE DOLLARS (\$19,321), plus interest, according to the terms of this CAFO and Attachment 1, attached hereto, which specifies an installment payment plan and interest schedule. Payment shall

be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

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

The payment by check shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

David H. Kim
Office of Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

9. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
10. If Respondent fails to pay the civil administrative penalty by the deadlines specified in Attachment 1, then Respondent shall immediately pay to EPA the stipulated penalty of TWO THOUSAND DOLLARS (\$2,000) plus the remaining balance of the penalty sum specified in Paragraph 8. In addition, failure to pay the civil administrative penalty

within the deadlines specified in Attachment 1 of this CAFO may lead to any or all of the following actions:

- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
- b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty within the deadlines specified in Paragraph 8. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal

Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

D. RETENTION OF RIGHTS

11. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in the Amended Complaint. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in the Amended Complaint; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in the Amended Complaint.
12. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,

and permits.

F. ATTORNEYS' FEES AND COSTS

13. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

G. EFFECTIVE DATE

14. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

H. BINDING EFFECT

15. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
16. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR KILAUEA CRUSHERS, INC.:

9-17-12
DATE

Wm Nichols
By:
Title:
Address:

FOR COMPLAINANT EPA REGION IX:

DATE

Director
Air Division
United States Environmental
Protection Agency, Region IX

75 Hawthorne Street
San Francisco, California 94105

FOR KILAUEA CRUSHERS, INC.:

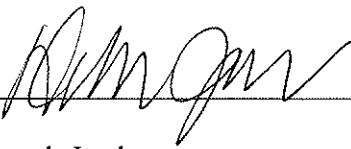
DATE

By:
Title:
Address:

FOR COMPLAINANT EPA REGION IX:

9/19/12

DATE



Deborah Jordan

Director
Air Division
United States Environmental
Protection Agency, Region IX

75 Hawthorne Street
San Francisco, California 94105


II. FINAL ORDER

EPA Region IX and Kilauea Crushers, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2011-0004) be entered, and Respondent shall pay a civil administrative penalty in the amount of \$19,321, plus interest, and otherwise comply with the terms set forth in the CAFO.

9-19-12

DATE



for STEVEN JAWGIEL
Regional Judicial Officer
United States Environmental
Protection Agency, Region IX

ATTACHMENT 1

**INSTALLMENT PAYMENT AND INTEREST SCHEDULE
DOCKET NO. CAA-09-2011-0004**

Principal	Days	Interest Payment	Principal	Installment Payment
\$19,321.00	30	\$0	\$4,830.25	\$4,830.25
\$14,490.75	210	\$83.37	\$4,830.25	\$4,913.62
\$9,660.50	240	\$63.52	\$4,830.25	\$4,893.77
\$4,830.25	240	\$31.76	\$4,830.25	\$4,862.01
Totals		\$178.65	\$19,321.00	\$19,499.65

1st Installment: **\$4,830.25** **(Due within 30 days of the effective date of the Consent Agreement and Final Order)**

2nd Installment: **\$4,913.62** **(Due within 210 days after the deadline for the first installment payment)**

3rd Installment: **\$4,893.77** **(Due within 240 days after the deadline for the second installment payment)**

4th Installment: **\$4,862.01** **(Due within 240 days after the deadline for the third installment payment)**

Total Payment: **\$19,499.65**

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Consent Agreement and Final Order was delivered by pouch mail to:

Sybil Anderson
Headquarters Hearing Clerk
Office of Administrative Law Judges (Mail Code 1900L)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail or pouch mail, addressed to the following:

The Honorable M. Lisa Buschmann
Administrative Law Judge
Office of Administrative Law Judges (Mail Code 1900L)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

Patrick J. Paul, Esq.
Snell & Wilmer LLP
One Arizona Center
400 East Van Buren
Phoenix, AZ 85004

Dated: _____

By: _____

Air Enforcement Office
U.S. Environmental Protection Agency, Region IX

In The Matter of Kilauea Crushers, Inc.; Docket No. CAA-09-2011-0004

CERTIFICATE OF SERVICE

I certify that the foregoing **Final Order and Consent Agreement**, dated September 20, 2012 was sent this day in following manner to the addresses listed below:



Sybil Anderson
Headquarters Hearing Clerk

Dated: **September 20, 2012**

Copy By Regular Mail:

Mr. William Nichols
Kilauea Crushers, Inc.
21940 N. 75th Avenue
Peoria, Arizona 85383

Copy By Regular Mail and Email to

David Kim
Assistant Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Email: kim.david@epa.gov

Patrick J. Paul, Esquire
Christopher P. Cloyer, Esquire
Snell & Wilmer LLP
One Arizona Center
400 East Van Buren
Phoenix, AZ 85004
Email: ccolyer@swlaw.com
ppaul@swlaw.com