

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Balkema Excavating, Inc.  
1500 River Street  
Kalamazoo, Michigan 49048,

**Respondent.**

) Docket No. CAA-05-01-0016  
)  
)  
) Proceeding to Assess an  
) Administrative Penalty  
) under Section 113(d) of the  
) Clean Air Act,  
) 42 U.S.C. § 7413(d)  
)

**Consent Agreement and Final Order**

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On July 20, 2001, U.S. EPA filed the complaint in this action against Respondent, Balkema Excavating, Inc. (Balkema). The complaint alleges that Balkema violated Section 111 of the Act, 42 U.S.C. § 7411, the New Source Performance Standards (NSPS) for Nonmetallic Mineral Processing Plants promulgated thereunder at 40 C.F.R. Part 60, Subpart 000, and the Michigan State Implementation Plan (SIP) at its Midway Aggregates Plant and its Climax Portable Plant in Climax, Michigan.

3. On August 23, 2001, Balkema filed an answer and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

**Stipulations**

4. Balkema admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

5. Balkema waives its right to contest the allegations in the complaint, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

6. Balkema certifies that it is complying fully with the NSPS for Nonmetallic Mineral Processing Plants, 40 C.F.R. Part 60, Subpart 000, and the Michigan SIP.

7. The parties consent to the terms of this consent agreement and final order (CAFO).

8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

**Civil Penalty**

9. In consideration of the economic impact of the penalty on Balkema's business, Balkema's full compliance history and good faith efforts to comply, the duration and the seriousness of the violation, as well as the economic benefit of noncompliance, U.S. EPA agrees to mitigate the proposed penalty of \$110,000 to \$60,500.

10. Balkema must pay the \$60,500 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

11. Balkema must send the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

12. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

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, Illinois 60604-3590

Susan M. Tennenbaum, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3509

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

14. If Balkema does not pay timely the civil penalty, U.S. 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.

15. Interest will accrue on any overdue amount from the date payment was due at a rate established under 26 U.S.C. § 6621(a)(2). Balkema will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Balkema will 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**

16. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in the complaint.

17. Nothing in this CAFO restricts U.S. EPA's authority to seek Balkema's compliance with the Act and other applicable laws and regulations.

18. This CAFO does not affect Balkema's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

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

20. The terms of this CAFO bind Balkema, its successors, and assigns.

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

22. Each party agrees to bear its own costs and fees in this action.

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

**U.S. Environmental Protection  
Agency, Complainant**

Date: 12-10-01

By: \_\_\_\_\_



Bharat Mathur, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

**Balkema Excavating, Inc., Respondent**

Date: 11-27-01

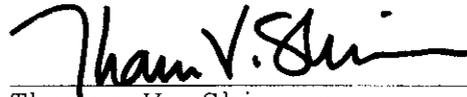
By: Daniel Balkema  
Dan Balkema, President

CONSENT AGREEMENT AND FINAL ORDER  
Balkema Excavating, Inc.  
Docket No. CAA-05-01-0016

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Date: 12.12.01



Thomas V. Skinner  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered an original of the Consent Agreement and Final Order (CAFO), docket number CAA-5-01-0016 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed an original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to the Balkema Excavating, Inc.'s Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Ronald E. Baylor, Esq.  
Miller, Canfield, Paddock and Stone, P.L.C.  
444 West Michigan Avenue  
Kalamazoo, Michigan 49007-3751

cc: Timothy McGarry, Chief  
Enforcement Unit  
Air Quality Division  
Michigan Department of Environmental Quality  
P.O. Box 30260  
Lansing, Michigan 48909

Honorable Thomas W. Hoya  
Administrative Law Judge  
Office of Administrative Law Judges (1900L)  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

US ENVIRONMENTAL PROTECTION AGENCY REGION 5

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REGIONAL HEARING CLERK

and by Facsimile to:

Honorable Thomas W. Hoya  
Administrative Law Judge  
FAX # (202)565-0044

on the 14<sup>th</sup> day of December, 2001.

Shanee Rucker  
Shanee Rucker  
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9586 3306