

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGION 5

IN THE MATTER OF:)
)
TECHNISAND INCORPORATED,)
BRIDGMAN, MICHIGAN,)
)
a division and wholly-owned subsidiary of)
)
FAIRMOUNT MINERALS LIMITED,)
CHARDON, OHIO,)
)
RESPONDENT.)
_____)

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CONSENT AGREEMENT

AND BY
FINAL ORDER
PROTECTION AGENCY
REGION 5

Docket No. CAA-05-2001-0017

CONSENT AGREEMENT

1. WHEREAS, this administrative action for the assessment of a civil penalty was initiated on August 13, 2001 through the filing of Complaint and Notice of Opportunity for Hearing (Complaint) pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), as amended, 42 U.S.C. § 7413(d), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits* (the Consolidated Rules), 40 C.F.R. Part 22.

2. WHEREAS, the Complainant is, by lawful delegation, the Director of the Air and Radiation Division, Region 5, United States Environmental Protection Agency (USEPA or the Agency).

3. WHEREAS, the Respondent is TechniSand Incorporated (TechniSand), a division and wholly-owned subsidiary of Fairmount Minerals Limited (Fairmount).

4. WHEREAS, TechniSand is, and was at all times relevant to the allegations in the Complaint, a corporation incorporated under the laws of the State of Delaware with a place of business located at 3840 Livingston Road, Bridgman, Michigan.

5. WHEREAS, Fairmount is, and was at all times relevant to the allegations in the Complaint, a corporation incorporated under the laws of the State of Delaware with a place of business located at 11833 Ravenna Road, Chardon, Ohio.

6. WHEREAS, the Complaint alleged in three counts the following:

A. Based upon the results of a stack test conducted on October 21, 1998 at TechniSand's # 3 Resin Plant Heater, which documented an average particulate matter emission rate of 0.64 pounds per thousand pounds of exhaust gas, Respondent violated Section 113(d) of the Act, 42 U.S.C. § 7413(d), when it failed to comply with the 0.10 pounds per thousand pounds of exhaust gas emission limit for particulate matter, as set forth under Michigan SIP Rule 331 [Count I];

B. Based upon stack tests conducted on November 20 and 21, 1998 and January 6, 1999 at TechniSand's # 3 Resin Plant Cooler, which documented an average particulate matter emission rate of 0.12 pounds per thousand pounds of exhaust gas, Respondent violated Section 113(d) of the Act, 42 U.S.C. § 7413(d), when it failed to comply with the 0.10 pounds per thousand pounds of exhaust gas emission limit for Particulate Matter, as set forth under Michigan SIP Rule 331 [Count II]; and

C. Based upon stack tests conducted on November 4, 1998 and January 7, 1999 at TechniSand's # 5 Resin Plant Mill vacuum lift, which documented an average particulate matter emission rate of 0.17 pounds per thousand pounds of exhaust gas, Respondent violated Section 113(d) of the Act, 42 U.S.C. § 7413(d), when it failed to comply with the 0.10 pounds per thousand pounds of exhaust gas emission limit for Particulate Matter, as set forth under Michigan SIP Rule 331 [Count III].

7. WHEREAS, Complainant proposed a penalty of Two Hundred and Fourteen Thousand and Three Dollars and No Cents (\$214,003) for these alleged violations.

8. WHEREAS, Respondent filed its Answer and Request for Hearing on September 14, 2001.

9. WHEREAS, Complainant and Respondent met in Chicago on October 24, 2001 to discuss settlement of this matter. As part of those discussions, Respondent proposed the performance of several Supplemental Environmental Projects (SEPs) intended to prevent or reduce the emission of air pollutants at its facility.

10. WHEREAS, Complainant and Respondent have agreed to settle this matter through entry of this Consent Agreement and Final Order (CAFO). 40 C.F.R. §§ 22.18 (b) and (c).

NOW THEREFORE,

11. Respondent consents to the terms and conditions of this agreement; hereby admits the jurisdictional allegations set forth in the Complaint; and agrees not to contest such jurisdiction in any proceeding to enforce the terms and conditions of this Agreement. 40 C.F.R. § 22.18(b)(2).

12. Respondent neither admits nor denies the remaining findings of fact or the alleged violations stated in the Complaint other than the admissions made in its Answer. 40 C.F.R. § 22.18(b)(2).

13. Respondent withdraws its request for a hearing in the above-captioned action and waives any and all rights to request a future hearing, under any provision of law, to contest any issue of fact or law alleged in the Complaint; to challenge any of the terms and conditions of this agreement; and to appeal the Final Order accompanying this Agreement. Respondent also waives

any and all rights to file a petition for judicial review of this Agreement in any United States District Court, as provided by Section 113(d)(4) of the Act, 42 U.S.C. § 7413(d)(4).

14. Respondent certifies that it is currently in full compliance with the Act, the Michigan SIP and all rules and regulations promulgated thereunder.

15. This CAFO constitutes a full and final settlement of all civil and administrative claims and causes of action that were specifically alleged in the Complaint. 40 C.F.R. § 22.31(a).

16. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to transfer of ownership of the subject facility and shall notify Complainant in writing, prior to such transfer, that it has done so. Respondent shall also provide the Agency in writing the name, address and phone number of any new owner of the facility within fifteen (15) days of such transfer.

17. Due to the good faith and cooperation of the Respondent; due to litigation considerations and due to Respondent's agreement to perform the two SEPs identified in Paragraph 24, below, Complainant has determined that an appropriate civil penalty to settle this action is Twenty Eight Thousand, One Hundred and Ninety Two Dollars and No Cents (\$28,192).

18. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the assessment and to the payment of this civil penalty. 40 C.F.R. § 22.18.

19. The penalty specified in Paragraph 17, above, represents a civil penalty assessed by the United States of America and, therefore, shall not be deductible for purposes of Federal taxes.

20. Respondent shall make the above-referenced payment by cashier's or certified check, made payable to the order of the "Treasurer, United States of America," and, within thirty (30) calendar days after the date this Agreement is filed with the Regional Hearing Clerk, Respondent shall send its payment to the following address:

USEPA-- Region 5
P.O. Box 70753
Chicago, Illinois 60673

With Respondent's payment of the civil penalty, Respondent shall also separately and simultaneously send written notice of such payment, including a copy of the check, to:

Regional Hearing Clerk [E-19J]
USEPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

John P. Steketee [C-14J]
Associate Regional Counsel
USEPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Air & Radiation Division [AE-17J]
Attn: Enforcement Tracker
USEPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

A transmittal letter identifying the docket number and billing (BD) number must accompany each copy of the check. The BD number is provided in the cover letter to this CAFO. Interest and late charges shall be paid as specified in Paragraph 22.

21. If Respondent fails to comply with any provision of this CAFO, any unpaid remainder of the adjusted proposed civil penalty of \$104,803 shall become immediately due and owing to USEPA and shall be immediately paid as provided in Paragraph 20. Failure to comply with this paragraph will result in the referral of this matter to the Department of Justice for collection of the

amount due, plus interest, and the validity, amount and appropriateness of such civil penalty, or any other terms or conditions of the CAFO, shall not be subject to judicial review. 42 U.S.C. § 7413(d)(5).

22. Pursuant to 31 U.S.C. § 3717, USEPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will, therefore, begin to accrue on the civil penalty if it is not paid by the date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling cost and attorney's fees. In addition, a non-payment penalty charge of five percent (5%) per year, compounded annually, will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).

23. Respondent shall complete the following SEPs, which the parties agree are intended to secure significant environmental or public health protection and improvements. By the effective date of this CAFO, Respondent shall begin to implement those portions of the SEPs that do not require permits from USEPA, MDEQ or any local authority. Respondent shall fully complete implementation of the following SEPs within one hundred and eighty (180) days of the effective date of this CAFO or within one hundred and eighty (180) days after all necessary permits are issued, whichever occurs later.

24. The SEPs are described as follows:

A. *Facility Roadway and Parking Lot Paving Project*. Respondent shall contract with a qualified paving contractor to grade and install bituminous asphalt pavement on all unpaved

roadways, haul roads and parking areas at its Bridgman, Michigan facility. The attached Site Plan identifies the roadways and areas that Respondent shall pave under this project. This project shall result in emission reductions of particulate matter of approximately twenty one (21) tons per year. Any failure to properly pave all such roads shall be deemed a violation of this Agreement.

B. *Fugitive Emissions Pollution Control Equipment Installation Project.* Respondent shall install new pollution control equipment to capture and remove particulate emissions from several processes and process equipment at the Raw Sand Plant at its Bridgman, Michigan facility. This project shall include the design, purchase and installation of a new fabric filter baghouse system and truck load out apparatus. The new baghouse system will be designed to reduce particulate emissions to an emission rate of 0.02gr/acfm, which will remove between 98% and 99.8% of the uncontrolled fugitive emissions. The air pollution sources to be controlled through capture and removal are the exhaust air sources from the following material handling points: the Sand Cooler output to the Conveyor; the Conveyor input to the Sand Screening; the Sand Screening output to the Conveyor; and the Truck Load Out. The air from these sources shall be routed through new ductwork to a new baghouse system. This project shall result in emission reductions of particulate matter of approximately forty seven (47) tons per year. Any failure to properly install and to continuously and successfully operate this pollution control equipment for at least five (5) years shall be deemed a violation of this Agreement.

25. The total expenditures for the *Facility Roadway and Parking Lot Paving Project* shall not be less than Thirty Thousand Dollars and No Cents (\$30,000) and the total expenditures for the *Fugitive Emissions Pollution Control Equipment Installation Project* shall not be less than Ninety Four Thousand, Five Hundred Dollars and No Cents (\$94,500). Any failure to expend such monies,

and document such expenditures to USEPA, shall be considered a violation of this agreement, unless the subject SEPs are completed to the satisfaction of USEPA and Respondent spends at least ninety percent (90%) of the amount of money required to be spent for each project and makes a good faith effort to document such expenditures.

26. Respondent shall submit to USEPA copies of all documentation of all the expenditures made in connection with the SEPs as part of a SEP Completion Report.

27. Respondent hereby certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the above-described SEPs by any federal, state or local law or regulation; nor is Respondent required to perform or develop the above-described SEPs by any other agreement, grant or as injunctive relief in any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the above-described SEPs. Respondent acknowledges that there are significant penalties for submitting false information to the federal government, including the possibility of fines and imprisonment, and that this certification is made under such penalties of federal law.

28. Respondent shall submit to USEPA the following SEP Reports:

A. A SEP Completion Report to be submitted to USEPA within thirty (30) days after completion of both SEPs. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEPs as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) A description of all itemized costs and copies of all documents proving such, including, but not limited to, all invoices, receipts, work or

purchase orders and contracts;

(iv) Certification that the SEPs have been fully implemented and are fully operational pursuant to the provisions of this CAFO;

(v) A description of the environmental and public health benefits resulting from implementation of the SEPs (with an updated quantification of the benefits and pollutant reductions achieved, based on the as-built project). With regard to the *Fugitive Emissions Pollution Control Equipment Installation Project*, Respondent shall perform emissions testing utilizing USEPA Reference Test Method 9 on the completed and fully operating baghouse, and a copy of such testing shall be submitted to USEPA as part of the SEP Completion Report. With regard to the *Facility Roadway and Parking Lot Paving Project*, copies of legible color photographs of all areas paved under the project shall be submitted to USEPA as part of the SEP Completion Report.

(vi) Copies of all final as-built blueprints, if they exist, or color photos, diagrams or drawings for each SEP.

B. Monthly Progress Reports regarding the status of the SEPs to be submitted to USEPA by Respondent no later than the 10th day of the month. Each monthly progress report shall include work performed during the past month, and work anticipated to be completed in the upcoming month.

29. Respondent agrees that failure to submit the SEP Completion Report, as required by Paragraph 28 above, shall be deemed a violation of this CAFO and Respondent shall become

immediately liable for the repayment of any unpaid remainder of the adjusted proposed civil penalty of \$104, 803 pursuant to Paragraph 37.

30. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

31. Respondent shall send copies of all above-referenced reports to the following persons:

John P. Steketee [C-14J]
Associate Regional Counsel
USEPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Farro Assadi [AE-17J]
Air & Radiation Division
USEPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

32. Respondent agrees that representatives of USEPA or MDEQ may inspect its facility at any reasonable time in order to confirm that the SEPs are being undertaken in conformity with the representations made herein.

33. Respondent shall notify USEPA if it ceases to use or operate the systems installed as the SEPs (except for maintenance in the ordinary course of business) within five (5) years subsequent to installation.

34. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to USEPA pursuant to this CAFO and shall provide the documentation of any such underlying research and data to USEPA not more than fifteen (15) days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to USEPA pursuant to this CAFO, Respondent shall, by its officers, or duly authorized representative, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information to the federal government, including the possibility of fines and imprisonment.

35. After receipt of the SEP Completion Report described in Paragraph 28, USEPA will notify the Respondent, in writing, either: that any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; that USEPA concludes that the project has been completed satisfactorily; or that the project has not been

completed satisfactorily and USEPA requires immediate repayment of the unpaid remainder of the adjusted proposed civil penalty pursuant to Paragraph 37.

36. If USEPA elects to exercise the first option above, i.e., if the SEP Completion Report is determined to be deficient but USEPA has not yet made a final determination about the adequacy of each SEP itself, USEPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. USEPA and Respondent shall have an additional thirty (30) days from the receipt by USEPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, USEPA shall provide a written statement of its decision on adequacy of the completion of the SEPs to Respondent, which decision shall be final and binding upon Respondent.

37. In the event the SEPs are not completed as contemplated herein, as determined in writing by USEPA, the portion of the adjusted proposed civil penalty reduced based upon Respondent's agreement to perform the above-referenced SEPs shall be immediately repaid to USEPA as provided in Paragraphs 20 and 21.

38. The determination of whether the SEPs have been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEPs shall be in the sole discretion of USEPA.

39. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of USEPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

40. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEPs (except for public notices of applications for and hearings on permits that may be required by USEPA or MDEQ to implement the SEPs) shall include the following language: *These projects were undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for alleged violations of the Clean Air Act.*

41. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute USEPA approval of the equipment or technology installed by Respondent in connection with the SEPs undertaken pursuant to this Agreement.

42. If any event occurs which causes or may cause delays in the completion of the SEPs as required under this CAFO, Respondent shall notify USEPA in writing not more than ten (10) days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this Agreement based on such incident.

43. If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

44. In the event that Complainant does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of the Respondent, USEPA will notify Respondent in writing of its decision and any delays in the completion of the SEPs shall not be excused.

45. The burden of proving that any delay is caused by circumstances beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, under any circumstances or in any event, be a basis for changes in this CAFO or extensions of time under Paragraph 43. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

46. The terms of this CAFO constitute a settlement by USEPA for only those claims for civil penalties pursuant to Section 113 of the Act, 42 U.S.C. § 7413 as alleged in the Complaint. Compliance with this CAFO shall not be a defense to any other actions commenced pursuant to federal, state or local law and it is the sole responsibility of the Respondent to comply with all applicable provisions of the CAA, and any other federal, state or local laws and regulations. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CAFO shall not be a defense to any actions

subsequently commenced pursuant to any federal law and regulation administered by USEPA, and it is the sole responsibility of Respondent to comply with such laws and regulations.

47. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq.

48. Notwithstanding any other provision of this Agreement, USEPA expressly reserves any and all rights to bring an enforcement action pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, or other statutory authority should USEPA find that may present an imminent and substantial endangerment to health or the environment. USEPA also expressly reserves the right: for any matters other than violations alleged in the Complaint, to take any action authorized under the CAA; to enforce compliance with the applicable provisions of the Michigan SIP; to take any action under any applicable regulations promulgated under the Act; and to enforce compliance with this CAFO.

49. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it. The terms and conditions of this CAFO shall be binding on both parties to this action, including their officers, directors, employees, agents, successors and assigns.

50. Each party shall bear its own costs and attorneys fees in connection with the above-captioned action as resolved by this Agreement.

51. Respondent and Complainant agree to the issuance of the attached Final Order.

52. This CAFO shall be deemed to be in full effect upon entry of the following Final Order by the Regional Administrator ratifying the Agreement, as required by the Consolidated Rules, 40 C.F.R. § 22.18(b)(3), and its filing with the Regional Hearing Clerk.

In the Matter of TechniSand Incorporated
Bridgman, Michigan; Docket No. CAA-05-2001-0017

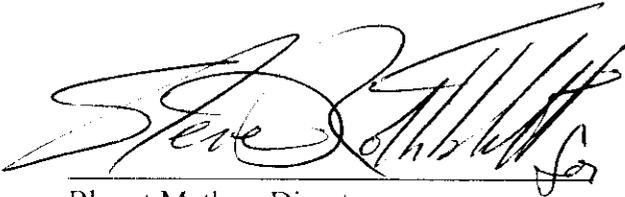
FOR RESPONDENT:



Cory J. Peruba
Environmental Coordinator
Fairmount Minerals
P.O. Box 177
Wedron, Illinois 60557

Date: 1/15/01

FOR COMPLAINANT:



Bharat Mathur, Director
Air and Radiation Division
USEPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Date: 1/23/2002



In the Matter of TechniSand Incorporated
Bridgman, Michigan; Docket No. CAA-05-2001-0017

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. This Final Order disposes of this proceeding in accordance with 40 C.F.R. § 22.31. Accordingly, 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 law other than those violations resolved by this Agreement. Respondent is hereby ordered to comply with the terms of the above Consent Agreement effective immediately upon the filing of this Consent Agreement and Final Order with the Regional Hearing Clerk.



js
Thomas V. Skinner
Regional Administrator
USEPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Date January 24, 2002

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-5-2001-0017 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to:

Cory J. Peruba
Environmental Coordinator
Fairmount Minerals
P.O. Box 177
Wedron, Illinois 60557

and to:

Jon S. Faletto, Esq.
Howard & Howard Attorneys, P.C.
One Technology Plaza, Suite 600
211 Fulton Street
Peoria, Illinois 61602-1350

and to:

Honorable Stephen J. McGuire
Administrative Law Judge
Office of Administrative Law Judges
United States Environmental Protection Agency
Ariel Rios Building, Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

by placing them in the custody of the United States Postal Service addressed as follows:

on the 25th day of January, 2002.

Shanee Rucker
Shanee Rucker
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER:

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