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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No. CAA-05-01-0015
)	
Consumers Concrete Corp. 3651 Vanrick Drive Kalamazoo, Michigan 49003,)	Proceeding to Assess an Administrative Penalty under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)
Respondent.)	

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, Consumers Concrete Corporation (Consumers Concrete). The complaint alleges that Consumers Concrete violated Section 111 of the Act, 42 U.S.C. § 7411, and the New Source Performance Standards (NSPS) for Nonmetallic Mineral Processing Plants promulgated thereunder at 40 C.F.R. Part 60, Subpart 000, at its nonmetallic mineral processing plant at 700 Nazareth Road, Kalamazoo, Michigan. Specifically, the complaint alleged that the Respondent violated 40 C.F.R. §60.676(a)(1) by failing to submit to the Administrator information about the replacement of two existing conveyors,

which were constructed and began operation after August 31, 1983, and which, therefore, were affected facilities, as defined at 40 C.F.R. § 60.670(e).

3. On August 28, 2001, Consumers Concrete filed an answer and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

4. On October 1, 2001, Consumers Concrete submitted documentation indicating that the two replacement conveyors were, in fact, pre-1983 conveyors, that the only modification that it had made was the lengthening of the conveyors, and that the parts used to lengthen the conveyors were taken from a third pre-1983 conveyor. Respondent, therefore, contended that the two conveyors that had been lengthened were not "affected facilities", as defined at 40 C.F.R. § 60.670(e).

5. In light of the documentation Respondent submitted, described in paragraph 4, above, U.S. EPA has since determined that the two conveyors in question were not affected facilities, as defined at 40 C.F.R. § 60.670(e), and that Respondent was not required to submit information to the Administrator about the conveyors under 40 C.F.R. § 60.676(a)(1).

6. Because U.S. EPA determined after Respondent had filed its Answer that no violation had, in fact, occurred, the parties have agreed to settle this matter without a penalty through this Consent Agreement and Final Order (CAFO).

Stipulations

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

8. Respondent 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).

9. Respondent 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.

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

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

Civil Penalty

13. In consideration of the facts set forth in paragraphs 4 through 6, above, U.S. EPA agrees to settle this matter without a penalty.

General Provisions

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

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

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

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

18. 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.

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

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

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

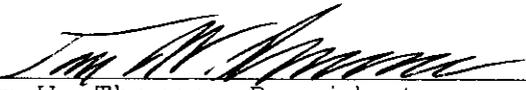
Date: 11-29-01

By: _____


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

**Consumers Concrete Corporation,
Respondent**

Date: 11/8/01

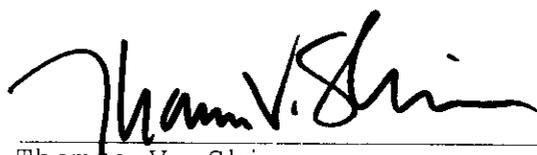
By: 
Tom W. Thomas, President

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CONSENT AGREEMENT AND FINAL ORDER
Consumers Concrete Corporation
Docket No. CAA-05-01-0015

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: 11-29-01



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

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CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered an original of the Consent Agreement and Final Order (CAFO), docket number CAA-5-01-0015 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 Consumer Concrete Corporation'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 J.F. Greene
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

and by Facsimile to:

Honorable J.F. Greene
Administrative Law Judge
FAX # (202)565-0044

on the 30th day of November, 2001.

Shanee Rucker
Shanee Rucker
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9586 1951