UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 30 2016

REPLY TO THE ATTENTION OF

VIA EMAIL: Lloydmeyer@ozinga.com
RETURN RECEIPT REQUESTED

Lloyd Meyer, President Chicago Division
Ozinga Ready Mix, Inc.
2222 South Lumber Street
Chicago, Illinois 60616

Dear Mr. Meyer:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves the Ozinga Ready Mix Concrete, Inc. case, docket no. **CAA-05-2016-0032**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on June 30, 2016.

Pursuant to paragraphs 54 and 55 of the CAFO, Ozinga must pay the civil penalty within 30 days of the filing date. Your check or electronic funds transfer must display the case name and case, docket number **CAA-05-2016-0032**.

Please direct any questions regarding this case to Nicole Cantello, Attorney at (312) 886-2870.

Sincerely,

Nathan Frank Chief
IL/IN Section
Air Enforcement and Compliance Assurance Branch

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Nicole Cantello/C-14J
Yasmine Keppner-Bauman (via electronic mail)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of: **Ozinga Ready Mix Concrete, Inc.** **Chicago, Illinois,** **Respondent.**	))))))))	**Docket No.** **CAA-05-2016-0032** **Proceeding to Assess a Civil Penalty Under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)**

REGIONAL HEARING CLERK
RECEIVED
JUN 30 2016
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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 CAA), 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. The Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Ozinga Ready Mix Concrete, Inc., a corporation doing business in Illinois.

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.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this 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 this 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. On February 21, 1980, EPA approved Illinois Pollution Control Board (IPCB) Rule 203(f)(1) [now 35 Ill. Admin. Code § 212.301] as part of the federally enforceable SIP for the State of Illinois. See 45 *Fed. Reg*. 11472, 11495. The rule at 35 Ill. Admin. Code § 212.301 states that, "No person shall cause or allow the emission of fugitive particulate matter from any process, including any material handling or storage activity, that is visible by an observer looking generally toward the zenith at a point beyond the property line of the emission source."

10. On July 14, 1999, EPA approved 35 Ill. Admin. Code § 212.302, as part of the federally enforceable SIP for the State of Illinois. See 64 *Fed. Reg*. 37847, 37851. The rule at 35 Ill. Admin. Code § 212.302 states that "[s]ections 212.304 through 212.310 and 212.312 of this Subpart shall apply to … manufacturing operations (SIC major groups 20 through 39…), which are located in the areas defined by the boundaries of the following townships … in the following counties: Cook: All townships."

11. On February 21, 1980, EPA approved IPCB Rule 203(f)(3)(C) [now 35 Ill. Admin. Code § 212.306 (Traffic Areas)] as part of the federally enforceable SIP for Illinois. This regulation became federally effective on February 21, 1980. 45 *Fed. Reg*. 11472, 11495. The rule at 35 Ill. Admin. Code § 212.306 requires, among other things, that all normal traffic pattern roads and parking facilities which are located on manufacturing property shall be paved or treated with

water, oils or chemical dust suppressants. All paved areas shall be cleaned on a regular basis. All areas treated with water, oils, or chemical dust suppressants shall have the treatment applied on a regular basis, as needed, in accordance with the operating program required by 35 Ill. Admin. Code §§ 212.309 and 212.310.

12. On February 21, 1980, EPA approved 35 Ill. Admin. Code § 212.308, as part of the federally enforceable SIP for the State of Illinois. 45 *Fed. Reg.* 11472, 11495. The rule at 35 Ill. Admin. Code § 212.308 is set forth in the Illinois SIP at IPCB Rule 203(f)(3)(Ea) and states that "[c]rushers, grinding mills, screening operations, bucket elevators, conveyor transfer points, conveyors, bagging operations, storage bins and fine product truck and railcar loading operations shall be sprayed with water or a surfactant solution, utilize choke-feeding or be treated by an equivalent method in accordance with an operating program."

13. On July 14, 1999, EPA approved 35 Ill. Admin. Code 212.309 (Operating Program) as part of the federally enforceable SIP for Illinois. This regulation became federally effective on September 13, 1999. 64 *Fed. Reg.* 37847, 37851. The rule at 35 Ill. Admin. Code § 212.309 states "[t]he emission units described in Sections 212.304 through 212.308 and Section § 212.316 of this subpart shall be operated under the provisions of an operating program, consistent with the requirements set forth in Sections 212.310 and 212.312 of this Subpart… Such operating program shall be designed to significantly reduce fugitive particulate matter emissions."

14. On February 21, 1980, EPA approved 35 Ill. Admin. Code § 212.310 as part of the federally enforceable SIP for the State of Illinois. 45 *Fed. Reg.* 11472, 11495. 35 Ill. Admin Code § 212.310 is set forth in the Illinois SIP at IPCB Rule 203(f)(3)(F) and describes the minimum requirements of a fugitive particulate matter operating program to include:

a. "The name and address of the source;

b. The name and address of the owner or operator responsible for execution of the operating program;

c. A map or diagram of the source showing approximate locations of storage piles, conveyor loading operations, normal traffic pattern access areas surrounding storage piles and all normal traffic patterns within the source;

d. Location of unloading and transporting operations with pollution control equipment;

e. A detailed description of the best management practices utilized to achieve compliance with this Subpart, including an engineering specification of particulate collection equipment, application systems for water, oil, chemicals and dust suppressants utilized and equivalent methods utilized;

f. Estimated frequency of application of dust suppressants by location of materials; and

g. Such other information as may be necessary to facilitate the Agency's review of the operating program."

15. On July 14, 1999, EPA approved 35 Ill. Admin. Code § 212.316 (Emission Limitations for Sources in Certain Areas) as part of the federally enforceable SIP for the State of Illinois. This regulation became federally effective on September 13, 1999. 64 *Fed. Reg.* 37847, 37851.

16. The rule at 35 Ill. Admin. Code § 212.316 applies to the operations specified in Section § 212.302 that are located in the areas defined in Section § 212.324(a)(1). The rule at 35 Ill. Admin. Code § 212.316(c) states that no person shall cause or allow fugitive particulate matter emissions from any roadway or parking area (except those at certain quarries) to exceed an opacity of 10 percent.

17. The rule at 35 Ill. Admin. Code § 212.302 states that Sections 212.304 through 212.310 and 212.312, applies to, among other things, manufacturing operations (SIC major groups 20 through 39) located in the geographical areas defined in Section 212.324(a)(1).

18. On March 11, 1998, EPA approved 35 Ill. Admin. Code 212.324 (Process Emission Sources in Certain Areas) as part of the federally enforceable SIP for Illinois. 63 *Fed. Reg.* 11842, 11847.

19. The rule at 35 Ill. Admin. Code § 212.324(a)(1) defines three geographical areas, one in the vicinity of Lake Calumet in Cook County, Illinois: That area bounded by boundaries from Universal Transmercator (UTM) coordinate 445000mE, 4622180mN, east to 456265mE, 4622180mN, south to 456265E, 4609020N, west to 445000mE, 4609020mN, north to 445000ME, 4622180mN.

20. On March 11, 1998, EPA approved 35 Ill. Code Part 212, Subpart A (General), Section 212.109 (Opacity Measurement Methods) as part of the federally enforceable SIP for Illinois. 63 *Fed. Reg.* 11842, 11847.

21. The rule at 35 Ill. Admin. Code § 212.109 states that opacity measurements from roadways shall be conducted in accordance with Method 9, 40 C.F.R. Part 60, Appendix A except that the number of readings required for each vehicle pass shall be three, taken at five (5)-second intervals. The first reading shall be at the point of maximum opacity and the second and third readings shall be made at the same point, the observer standing at right angles to the plume at least 15 feet away from the plume and observing 4 feet above the surface of the roadway or parking area. After four vehicles have passed, the 12 readings shall be averaged.

22. The Administrator of EPA may issue an administrative penalty order (APO) assessing a civil penalty of up to $37,500 per day for each violation, with a maximum of $295,000 for violations that occurred between January 13, 2009 and December 6, 2013, and $37,500 per day of violation, with a maximum of $320,000 for violations that occurred after December 6, 2013, under Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19.

23. Section 113(d)(1) of the Act 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 the Attorney General of the United

States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

24. 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

Lumber Street Allegations and Violations

25. Ozinga owns and operates a concrete batch manufacturing plant, SIC 3273, located at 2255 South Lumber Street, Chicago, Illinois (the Lumber Facility). The Lumber Facility's Standard Industrial Classification (SIC) Code is 3273 (ready-mixed concrete manufacturing).

26. Emissions from the Lumber Street Facility are subject to the fugitive particulate matter regulations in the Illinois SIP at IPCB Rule 203(f)(1) and 203(f)(3)(C) and (F) and 35 Ill. Admin. Code §§ 212.301, 212.302, 212.306, 212.309, and 212.310, and Section 114 of the CAA.

27. At all times relevant to this CAFO, the Lumber Street Facility was subject to the provisions of the Illinois SIP at 35 Ill. Admin. Code §§ 212.301, 212.302, 212.306, 212.308, 212.309, and 212.310, and Section 114 of the CAA.

28. On March 6, 2014, EPA representatives performed an inspection of the Facility and observed the following:

a. Fugitive particulate matter emissions were observed while materials were removed from one of the piles onsite that was close to Lumber Street;

b. Fugitive particulate matter emissions were generated as a materials handler moved materials from a barge in the river to a pile;

c. Conveyors were not enclosed;

d. There was an unknown odor; and

e. Some of the various raw material storage piles appeared to not be wet.

29. On June 16, 2014, EPA conducted offsite observations of the Lumber Facility and saw particulate matter emissions from the road, which crossed Ozinga's property line on the western side of the Facility's property as concrete trucks left the Facility. As the trucks left the Lumber Facility, dust from the roads blew onto Lumber Street.

30. On July 21, 2014, EPA conducted offsite observations of the Lumber Facility. EPA's inspector saw particulate matter emissions from barge loading off-loading operations, which crossed Ozinga's property line and blew into the South Branch of the Chicago River.

31. After the inspection and observations, EPA's inspector asked facility personnel for the current Fugitive Particulate Matter Operating Program ("Program"). Although Ozinga provided EPA with the facility's operating program dated September 11, 2009 on June 1, 2015, at the inspection, the facility provided a document dated November 6, 1987, which did not include current information about the following:

a. A map or diagram of the facility showing approximate locations of storage piles, conveyor loading operations, normal pattern access areas surrounding storage piles and all normal traffic patterns within the facility;

b. Locations of unloading and transporting operations with pollution control equipment;

c. Pollution controls and best management practices for the particulate matter emissions from the crushing plant and portable concrete plant;

d. Estimated frequency of application of dust suppressants by location of materials.

The current operating program of record dated September 11, 2009, contains the information required in subparagraphs (a) through (d) above.

32. On October 8, 2014, EPA sent Ozinga a Request for Information pursuant to Section 114 of the Clean Air Act. The Request required Ozinga to answer the Request within 30 calendar days of receipt of the Request.

33. On June 1, 2015, Ozinga submitted its response to EPA's October 8, 2014, Request for Information. The Response was submitted approximately six months late.

34. On May 28, 2015, EPA again inspected the Lumber Facility and observed the following:

a. Fugitive particulate matter emissions were coming off the west end of the facility across Lumber Street; and

b. Vehicles leaving the facility grounds were generating fugitive particulate emissions from the internal roadway.

35. Ozinga violated Rule 203(f)(3)C) of the Illinois SIP [35 Ill. Admin. Code § 212.306] on March 6, 2014, June 16, 2104, and May 28, 2015, as observed by EPA's inspector by not cleaning the roads of the Lumber Facility, which are paved, so as to prevent particulate matter emissions.

36. Ozinga violated Rule 203(f)(l) of the Illinois SIP [35 Ill. Admin. Code § 212.301], on June 16, 2014, July 21, 2014, and May 28, 2015, as observed by EPA's inspector, by causing particulate matter to cross the property line of the Lumber Facility.

37. Ozinga violated 35 Ill. Admin. Code § 212.309 and Rule 203(f)(3)(F) of the Illinois SIP [35 Ill. Admin. Code § 212.310] on March 6, 2014 and July 21, 2014, by not using best management practices at the Lumber Facility to significantly reduce particulate matter emissions.

38. Ozinga violated Rule 203(f)(3)(F) of the Illinois SIP [35 Ill. Admin. Code § 212.310] by not having available its current Fugitive Particulate Matter Operating Program when requested by EPA's inspector.

39. Ozinga violated Section 114 of the Act by failing to comply with a Request for Information issued on October 8, 2014, by the due date, November 9, 2014. 42 U.S.C. § 7414(a)(1).

40. On March 31, 2015, EPA issued to Ozinga a Notice of Violation (NOV) alleging violations of the Illinois SIP at 35 Ill. Admin. Code §§ 212.309, 212.310, 212.306, and 212.301 and Section 113(a) (1) the Act. . 42 U.S.C. § 7414(a)(1).

41. On March 31, 2015, EPA issued to Ozinga an Administrative Order pursuant to Section 113(a) (1) of the Act, requiring Ozinga to comply with the requirements of the Section 114 Request within 20 days. 42 U.S.C. § 7414(a)(1).

42. On May 21, 2015, EPA and Ozinga discussed the March 31, 2015, NOV and Administrative Order.

1818 East 103rd Street Allegations and Violations

43. Ozinga owns and operates a concrete manufacturing plant at 1818 East 103rd Street, Chicago, Illinois (the 1818 East 103rd Street Facility). The 1818 East 103rd Street Facility's SIC Code is 3273.

44. The 1818 East 103rd Street Facility is located within a geographical area bounded by lines from UTM coordinate 445000mE, 4622180mN, east to 456265mE, 4622180mN, south to 456265E, 4609020N, west to 445000mE, 4609020mN, north to 445000ME, 4622180mN.

45. Emissions from the traffic areas at the 1818 East 103rd Street Facility are subject to the fugitive particulate matter regulations in the Illinois SIP at 35 Ill. Admin. Code §§ 212.302, 212.306, 212.309, and 212.316 and the opacity measurement methods in 35 Ill. Admin. Code § 212.109.

46. At all times relevant to this CAFO, the 1818 East 103rd Street Facility was subject to the provisions of the Illinois SIP at 35 Ill. Admin. Code §§ 212.302, 212.306, 212.309, and 212.310.

47. On September 9, 2014, EPA conducted an inspection of the 1818 East 103rd Street Facility. During the inspection, the inspector observed the following:

a. Vehicles were driving on Facility roadways generating fugitive particulate matter;

b. Significant amounts of stones were present on the paved areas of the Facility; and

c. The Facility representative stated that the roadways and yard are swept and watered once per week by an outside company.

48. During the EPA inspection, an EPA inspector took opacity measurements of vehicles driving on the internal roadways using 40 C.F.R. Part 60, Appendix A, Method 9. The inspector took three readings for each of six vehicle passes. The readings were taken at five (5) second intervals. The readings were taken from a standing position at least 15 feet away from the plume. The results are shown below:

Vehicle	1st Pass Opacity (%)	2nd Pass Opacity (%)	3rd Pass Opacity (%)	12-Reading (Four Vehicle) Average Opacity (%)
First	20	20	15	21.7 (4th, 5th, 6th, 1st)
Second	20	15	0	19.6 (5th, 6th, 1st, 2nd)
Third	30	20	15	19.6 (6th, 1st, 2nd, 3rd)
Fourth	20	20	20	17.9 (1st, 2nd, 3rd, 4th)
Fifth	20	30	15	18.8 (2nd, 3rd, 4th, 5th)
Sixth	30	30	20	22.5(3rd, 4th, 5th, 6th)

49. When requested by the EPA inspector, the 1818 East 103rd Street Facility representative provided the inspector with the Facility's Fugitive Particulate Matter Emission Control Plan, dated September 11, 2009. Section 3.2 of the 1818 East 103rd Street Facility's Fugitive Particulate Matter Emission Control Plan states that roads are swept two days per week in favorable conditions. Section 3.2 of the Plan also states that water is a component of the control plan. Section 3.3 of the Facility's Fugitive Particulate Matter Emission Control Plan states that roadways and parking areas are swept and watered "as needed" to maintain an opacity of less than 10 percent.

50. At the 1818 East 103rd Street Facility, Ozinga caused or allowed fugitive particulate matter emissions from its internal roadways of 17.9 to 22.5 percent opacity on September 9, 2014,

as an average of 12 readings, three readings per vehicle for six vehicles, in excess of the 10 percent limit, in violation of 35 Ill. Admin. Code § 212.316(c).

51. Ozinga violated 35 Ill. Admin. Code § 212.306, by not cleaning its roadways on a regular basis, as needed, in accordance with the operating program required by 35 Ill. Admin. Code § 212.309.

52. On March 11, 2015, EPA issued to Ozinga an NOV, alleging violations of the Illinois SIP at 35 Ill. Admin. Code §§ 212.309, 212.310, and 212.306.

53. On May 21, 2015, representatives of Ozinga and EPA discussed the March 11, 2015 NOV.

Civil Penalty

54. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Ozinga's cooperation and agreement to perform Supplemental Environmental Projects, Complainant has determined that an appropriate civil penalty to settle this action is $37,689.00.

55. Within 30 days after the effective date of this CAFO, Respondent must pay a $37,689.00 civil penalty by check, electronic funds transfer or online.

For checks sent by regular U.S. Postal Service mail, send a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes) send a casher's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note Respondent's name and the docket number of this CAFO.

For electronic funds transfer, make payable to "Treasurer, United States of America," and send to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

For Automated Clearinghouse (ACH) also known as REX or remittance express, make electronic funds transfer payable to "Treasurer, United States of America," and send to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

For on-line payment, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

56. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch

Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Nicole Cantello (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

58. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 76, below, EPA may request that the Attorney General of the United States bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and any United States enforcement expenses for a collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

59. 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 pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. 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. 42 U.S.C. § 7413(d)(5).

Supplemental Environment Projects

60. Respondent must complete two supplemental environmental projects ("SEP 1" and "SEP 2") designed to protect the environment by reducing emissions of air pollution. SEP 1 will reduce emissions of carbon dioxide (CO_2), particulate matter 2.5 ($PM_{2.5}$), volatile organic compounds (VOC), nitrogen oxides (NOx) and carbon monoxide (CO) to the air. SEP 2 will reduce PM_{10}, CO and NOx emissions to the air.

61. At its Chicago operations, Respondent must complete SEP 1 as described in this paragraph. Within twenty-four (24) months of the effective date of this CAFO, Ozinga will ship 30 used diesel trucks that are at least six years old out of the United States and purchase 30 new, state-of-the-art model year 2016 or later diesel trucks to replace them. Ozinga will ship out and purchase the trucks at six (6)-month intervals, according to the scope of work in Exhibit A.

62. At its Jarvis Avenue Yard, located at 200 East Jarvis Avenue, Des Plaines, IL and at it Wolf Road Yard, located at 580 South Wolf Road, Des Plaines, IL, Ozinga will complete SEP 2 as described in this paragraph. Within twelve (12) months of the effective date of this CAFO, Ozinga will install an underground, enclosed system designed for the routine unloading, storage and handling of sand and coarse aggregates at the Jarvis Avenue Yard. These materials will be directly fed into the mixing plant from underground by an enclosed conveyor system to feed the plant. This will eliminate the routine handling of these materials by open air front-end loaders. In addition, this substantial reconfiguration of the Jarvis Avenue Yard will enable Ozinga to move work away from the Wolf Road Plant (located in a residential area) to the Jarvis Avenue Plant (located in a commercial/industrial area). Within twenty-four (24) months of the effective date of this CAFO, Ozinga will reduce the throughput of Ozinga ready mix concrete production at the Wolf Road Plant to no more than 50 percent of its calendar year production levels for the life of its lease. The parties understand that Ozinga must operate the plant to

comply with its pre-existing contractual obligations to preserve the plant's functional capability, permitting and non-conforming uses of the property owner. To complete this SEP, Ozinga follow the schedule set forth in Exhibit B.

63. For SEP 1, Respondent must spend at least $5,400,000 to purchase the new, state-of-the-art diesel trucks for its Chicago operations and operate them for at least five (5) years.

64. For SEP 2, Respondent must spend $3,000,000 to install the unground aggregate storage and handling system at the Jarvis Avenue Yard.

65. Following the installation, shakedown and startup of the underground sand and aggregate storage and handling equipment at the Jarvis Avenue Yard, Respondent must continuously use or operate this equipment for at least five (5) years following the date of the permit from the Illinois EPA for its installation and operation.

66. Within 24 months of the effective date of this CAFO, Respondent must significantly curtail ready mix concrete production at the Wolf Road Plant so as to maintain the plant only as appropriate to ensure that it will be able to serve as a temporary backup facility in the event of operational issues at the Jarvis plant and to comply with Ozinga's pre-existing contractual obligations to preserve the plant's functional capability.

67. For SEP 1 and SEP 2, Respondent certifies as follows:

> I certify that Ozinga Ready Mix Concrete, Inc. is not required to perform or develop SEP 1 or SEP 2 by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Ozinga Ready Mix Concrete, Inc. has not received, and is not negotiating to receive, credit for SEP 1 or SEP 2 in any other enforcement action.
>
> I certify that Ozinga Ready Mix Concrete, Inc. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as SEP 1 or SEP 2. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP 1 or SEP 2, nor has the same activity been described in an unsuccessful federal financial assistance transaction

proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

68. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP 1 or SEP 2 requirements.

69. Respondent must maintain copies of the underlying research and data for all reports submitted to EPA pursuant to this CAFO. Respondent must provide the documentation of any underlying research and data to EPA within seven days of EPA's request for the information.

70. Respondent must submit the reports required by the scope of work to EPA according to the schedules in Exhibits A and B.

71. For each of SEP 1 and SEP 2, Respondent must submit a SEP completion report to EPA within twenty-four (24) months after the effective date of this CAFO. These reports must contain the following information.

a. Detailed description of the SEP as completed;
b. Description of any operating problems and the actions taken to correct the problems;
c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
d. Certification that Respondent has completed the SEP in compliance with this CAFO, including any significant changes, which shall be fully described, including the manner in which Respondent and EPA agreed upon any such changes; and
e. Description of the actual environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

72. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 56, above.

73. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

> I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

74. Following receipt of the SEP completion reports described in paragraph 71, above, EPA must notify Respondent in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 76.

75. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 76, below.

76. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b below, if Respondent ceases work without cause on either of the SEPs and EPA notifies Respondent that the SEP has not been completed because the cessation is contrary to the requirements of this CAFO, including the schedules in paragraphs 61 and 62 and Exhibits A and B, Respondent must negotiate an additional SEP with EPA within 60 days of receipt of such notification, and subsequently

perform or fund such SEP. The new SEP shall provide at least the same environmental benefit as the SEP it is intended to replace.

b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraphs 63 and 64, Respondent will not be liable for any stipulated penalty or additional SEP for failure to complete the SEP .

c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraphs 63 and 64, Respondent must pay a penalty of $40,000.

d. If Respondent did not submit timely the SEP completion report or any other report required by paragraphs 70 and 71 and Exhibits A and B, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

Penalty per violation per day	Period of violation
$ 1,000	1st through 14th day
$ 5,000	15th through 30th day
$ 10,000	31st day and beyond

77. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

78. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 55, above, and will pay interest and nonpayment penalties on any overdue amounts.

79. Any public statement that Respondent makes referring to the SEP must include the following language: "Ozinga undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Ozinga for violations of 35 Ill. Admin. Code Part 212, Subpart K (governing fugitive particulate matter emissions) of the Illinois SIP."

80. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If EPA does not agree that circumstances beyond the control of Respondent caused or may a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

81. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

82. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Cantello.Nicole@epa.gov (for Complainant), and Lloydmeyer@ozinga.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

84. The effect of the settlement described in paragraph 83, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraphs 60-63 of

this CAFO and Respondent's letter dated March 10, 2016 and Respondent's electronic mail messages dated March 16 and 21, 2016.

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

86. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 83, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

87. Respondent certifies that, subject to the schedules and other requirements of the Administrative Order on Consent it has signed concurrently with this CAFO, it is complying fully with 35 Ill. Admin. Code Part 212, Subpart K and its fugitive particulate matter operating program.

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

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

90. 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.

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

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

Consent Agreement and Final Order
In the Matter of: Ozinga Ready Mix Concrete, Inc.
Docket No.

Ozinga Read Mix Concrete, Inc., Respondent

June 27, 2016
Date

Lloyd K. Meyer
Lloyd Meyer, President, Chicago Division
Ozinga Ready Mix Concrete, Inc.

United States Environmental Protection Agency, Complainant

6/29/16
Date

Edward Nam
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Ozinga Ready Mix Concrete, Inc.
Docket No. CAA-05-2016-0032

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.

6/30/16
Date

Robert Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

Exhibit A: Scope of Work for SEP 1

Time Frame	**Required Action**	**Required Reporting**
Six (6) months after effective date of CAFO	Ship out 7 older trucks and purchase 7 new trucks	Submit status report December 31, 2016
Twelve (12) months after effective date of CAFO	Ship out 7 older trucks and purchase 7 new trucks	Submit status report June 30, 2017
Eighteen (18) months after effective date of CAFO	Ship out 8 older trucks and purchase 8 new trucks	Submit status report December 31, 2017
Twenty-four (24) months after effective date of CAFO	Ship out 8 older trucks and purchase 8 new trucks	Submit Final SEP report

Exhibit B: Scope of Work for SEP 2

Time Frame	Required Action	Required Reporting
June 30, 2016	Sign contract to install underground enclosed unloading, storage and handling system for sand and aggregate at Jarvis Avenue Yard.	Submit status report July 31, 2016
November 30, 2016	Complete installation of underground enclosed unloading, storage and handling system for sand and aggregate at Jarvis Avenue Yard	Submit status report December 31, 2016
March 31, 2017	Completion of shakedown period for underground enclosed unloading, storage and handling system at Jarvis Avenue Yard	Submit status report June 30, 2017
June 30, 2017	Startup of underground enclosed unloading, storage and handling system at Jarvis Avenue Yard	Submit status report July 31, 2017
November 30, 2017	Transfer 50 percent of operations from Wolf Road Yard to Jarvis Avenue Yard	Submit status report December 31, 2017
April 30, 2018	Complete significant curtailment of ready mix concrete production at Wolf Road Yard, so Wolf Road Yard serves only as a temporary backup facility in the event of operational issues at the Jarvis Avenue Yard and complies with Ozinga's pre-existing contractual obligations to preserve the plant's functional capability	Submit status report May 31, 2018
Twenty-four months after effective date of CAFO	Provide supporting documentation for completion of SEP 2	Submit SEP completion report

In the matter of:
Docket Number: **CAA-05-2016-0032**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on [June 30, 2016], this day in the following manner to the addressees:

Copy by email to Respondent:

Lloyd Meyer, President Chicago Division
Lloydmeyer@ozinga.com

Copy by email to Respondent's attorney:

Nancy J. Rich, Esq.
Katten, Muchin, Rosenman LLP
Nancy.Rich@kattenlaw.com

Copy by e-mail to Complainant:

Nicole Cantello
Cantello.Nicole@epa.gov

Copy by e-mail to Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: June 30, 2016

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): N/A