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

JAN - 6 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jim Austen
Starr Austen & Miller, LLP
201 S. 3rd Street
Logansport, Indiana 46947

Dear Mr. Austen:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves **CAA-05-2016-0013**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on January 6, 2016.

Pursuant to paragraph 28 of the CAFO, Engineering Aggregates Corporation must pay the $6,000 civil penalty within 30 days of February 5, 2016. Your electronic funds transfer must display the case name and the docket number **CAA-05-2016-0013**.

Please direct any questions regarding this case to Rachel Zander at (312) 353-1505.

Sincerely,

Virginia Galinsky for

Brian Dickens
Chief
Air Enforcement and Compliance Assurance Section (OH/MN section)

Enclosure

cc: Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
R. Zander/C-14J
P. Perry/IDEM

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REGION 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2016-0013**
	)	
Engineering Aggregates Corporation Logansport, Indiana	)	**Proceeding to Assess a Civil Penalty Under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)**
	)	
Respondent.	)	
	)	

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

3. Respondent is Engineering Aggregates Corporation, a corporation doing business in Indiana.

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. Each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the CAA, 42 U.S.C. § 7410.

10. On October 28, 1975, EPA approved 326 Indiana Administrative Code (IAC) 6-4, Particulate Rules for Fugitive Dust Emissions, as part of the federally enforceable State Implementation Plan (SIP) for Indiana. 40 Fed. Reg. 50032, 50033.

11. Pursuant to 326 IAC 6-4-2(4), a source generating fugitive dust shall be in violation of the SIP if particulate matter is visible crossing the boundary line or property line of a source.

12. Pursuant to 326 IAC 1-2-73, "source" means an aggregation of one or more stationary emissions units that are located on one piece of property or on contiguous or adjacent properties are owned or operated by the same person (or by persons under common control) and belong to a single major industrial grouping.

13. Pursuant to 326 IAC 1-2-23.5, "emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant under the Clean Air Act.

14. Pursuant to 326 IAC 6-4-1, "fugitive dust" means the generation of particulate matter to the extent that some portion of the material escapes beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located.

15. Pursuant to 326 IAC 1-2-52, "particulate matter" means any airborne finely divided solid or liquid material, excluding uncombined water, with an aerodynamic diameter smaller than 100 micrometers (μm). Particulate matter is a regulated air pollutant under the Clean Air Act.

16. The Administrator of EPA (the Administrator) may assess a civil penalty of up to $37,500 per day of violation up to a total of $320,000 for a violation of a SIP that occurred after December 6, 2013 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. Respondent owns and operates a limestone aggregate facility referred to as "Plant 1," at 2413 S. County Road 150 East in Logansport, Indiana.

18. Respondent owns and operates a sand and gravel aggregate facility referred to as "Plant 2," at 1990 S. County Road 500 East in Logansport, Indiana.

19. Respondent's Plant 1 extracts and processes limestone. Respondent's Plant 2 extracts and processes sand and gravel. At both facilities, Respondent generates particulate matter through its process of crushing, screening, and conveying aggregate as well as from the use of roadways, from storage piles, and other areas of the plant site.

20. Respondent's Plant 1 and Plant 2 contain emissions units because activities at Plant 1 and Plant 2 result in the generation of particulate matter, an air pollutant regulated by the Clean Air Act.

21. Plant 1 and Plant 2 are sources because the plants are stationary and contain emission units.

22. Respondent's Plant 1 and Plant 2 are subject to the fugitive dust emission regulations in the Indiana SIP at 326 IAC 6-4 because both Plant 1 and Plant 2 are sources and activities at both Plant 1 and Plant 2 generate particulate matter.

23. On July 22, 2015, EPA enforcement officers observed the generation of particulate matter at Plant 1. The EPA enforcement officers observed the particulate matter crossing beyond the boundary line or property line of Plant 1.

24. Respondent violated 326 IAC 6-4-2(4), regarding fugitive dust, by generating particulate matter that was visible crossing the boundary line or property line of Plant 1.

25. On September 23, 2015, EPA issued to Respondent a notice of violation alleging that it violated the Indiana SIP at 326 IAC 6-4 for fugitive dust emissions.

26. On October 13, 2015, representatives of Respondent and EPA discussed the September 23, 2015 notice of violation.

Civil Penalty

27. 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, cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is $6,000.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a $6,000 civil penalty by electronic funds transfer 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.

29. 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

Rachel Zander (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

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

31. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the 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.

32. 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).

General Provisions

33. 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: Zander.Rachel@epa.gov (for Complainant), and Austen@starrausten.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

35. The effect of the settlement described in paragraph 34, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraphs 17-19 of this CAFO.

36. 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.

37. 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 34, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

38. Respondent certifies that it is complying fully with 326 IAC 6-4 and the Clean Air Act.

39. 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).

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

41. 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.

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

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

Engineering Aggregates Corporation, Respondent

12-22-15
Date

Joseph J. Jones, President
Engineering Aggregates Corporation

United States Environmental Protection Agency, Complainant

12/28/15
Date

George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Engineering Aggregates Corporation
Docket No. CAA-05-2016-0013

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.

1/4/2016
Date

Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Engineering Aggregates Corporation
Docket Number: **CAA-05-2016-0013**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CAA-05-2016-0013** , which was filed on 1/6/2016, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Respondent: Jim Austen
Austen@starrausten.com

Copy by E-mail to
Attorney for Complainant: Rachel Toenjes Zander
zander.rachel@epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: January 7, 2016

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