



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

JUN 27 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Cleopatra Bizoukas
President
Asphalt Cutbacks, Inc.
3000 Gary Avenue
East Chicago, Indiana 46312

Dear Ms. Bizoukas:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Asphalt Cutbacks, Inc. (A.C.I.), Docket No. CAA-05-2012-0036. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUN 27 2012.

Pursuant to paragraph 42 of the CAFO, A.C.I. must pay the civil penalty within 30 days of JUN 27 2012. Your electronic funds transfer must display the case name, the docket number, CAA-05-2012-0036, and the billing document number, 2751203A038.

Please direct any questions regarding this case to Reginald Pallesen, Associate Regional Counsel, at (312) 886-0555.

Sincerely,

Sara Breneman

Sara Breneman
Air Enforcement and Compliance Assurance Branch
MI/WI

Enclosure

cc: John Breslin, Regional Judicial Officer/C-14J
Phil Perry, Chief, IDEM
Rick Massoels, Environmental Manager, IDEM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Asphalt Cutbacks, Inc.)
East Chicago, Indiana)
Respondent.)
_____)

Docket No. CAA-05-2012-0036
Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

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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 Act), 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, Region 5.

3. Respondent is Asphalt Cutbacks, Inc. (A.C.I.), 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 the 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 August, 18, 1995, the EPA approved 326 Indiana Administrative Code (IAC) 2-8-1, 2-8-2, 2-8-3, and 2-8-6 as part of the federally enforceable Indiana State Implementation Plan (SIP). 60 *Fed. Reg.* 43008 (August 18, 1995). 326 IAC 2-8-1, 2-8-2, 2-8-3, and 2-8-6 became federally effective on October 17, 1995.

10. 326 IAC 2-8-3(a) requires the owner or operator of a source seeking a federally enforceable state operating permit (FESOP) to submit a complete application on such form or forms as the commissioner may establish.

11. 326 IAC 2-8-3(b) states that in order for an application to be deemed complete, it must contain, in part, all information required under subsection (c). The information submitted under subsection (c) must be sufficient to evaluate the subject source and its application and to determine all applicable requirements.

12. 326 IAC 2-8-3(c)(3)(A-C) states that an application for a FESOP shall include, at minimum, the following emissions-related information for each emissions unit at the FESOP source: (A) All emissions of regulated air pollutants. A FESOP application shall describe all emissions of regulated air pollutants emitted from any emissions unit; (B) Identification and description of all points of emissions described in clause (A) in sufficient detail to establish the applicability of requirements of this title; and (C) Emissions rates in tons per year (tpy) and in

such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

13. 326 IAC 2-8-1 states that the definitions provided in 326 IAC 2-7 apply throughout 326 IAC 2-8.

14. On November 14, 1995, the EPA approved definitions in 326 IAC 2-7-1 as part of the federally enforceable Indiana SIP. 60 *Fed. Reg.* 57188 (November 14, 1995).

326 IAC 2-7-1 became federally effective on December 14, 1995.

15. 326 IAC 2-7-1(14) defines "emissions unit," in part, as any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant.

16. 326 IAC 2-7-1(30)(A) defines "regulated air pollutant," in part, as any volatile organic compound (VOC).

17. Title V of the Act, 42 U.S.C. §§ 7661 through 7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including "major sources," and other sources made subject under Section 502(a) of the Act, 42 U.S.C. § 7661a(a).

18. 326 IAC 2-7-2(a) states, in part, that a major source as defined in 326 IAC 2-7-1(21) is required to have a Part 70 permit. Any source, including an area source, subject to a standard, a limitation, or other requirement under Section 111 of the Act is also required to have a Part 70 permit.

19. 326 IAC 2-7-1(21) and 40 C.F.R. § 70.2 both define "major source," in part, as any stationary source belonging to a single major industrial grouping that directly emits, or has the potential to emit, 100 tpy or more of any regulated air pollutant.

20. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), requires, in part, that after the effective date of any permit program approved or promulgated under Title V of the Act, it shall be unlawful for any person to violate any requirement of a permit issued under Title V.

21. 326 IAC 2-8-2 states that a source required to have a Part 70 permit as described in 326 IAC 2-7-2(a) may apply to the commissioner for a FESOP.

22. 326 IAC 2-8-6(b) states that all terms and conditions in a FESOP, including any provisions designed to limit a source's potential to emit, are enforceable by the EPA and citizens under the Act.

23. Pursuant to Section 111(b) of the Act, 42 U.S.C. § 7411(b), on August 6, 1982, the EPA promulgated the Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture at 40 C.F.R. Part 60, Subpart UU (Subpart UU) (40 C.F.R. §§ 60.470 through 60.474). *47 Fed. Reg.* 34143 (August 6, 1982). On October 17, 2000, the EPA approved revisions to Subpart UU. *65 Fed. Reg.* 61762 (October 17, 2000).

24. Condition D.1.4(a) of A.C.I.'s FESOP and Subpart UU, at 40 C.F.R. § 60.472(c), require that A.C.I. shall not cause to be discharged into the atmosphere from any asphalt storage tank exhaust gases with opacity greater than 0 percent, except for one consecutive 15-minute period in any 24-hour period when the transfer lines are being blown for clearing.

25. Section 111(e) of the Act, 42 U.S.C. § 7411(e), states that after the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator or any new source to operate such source in violation of any standard of performance applicable to such source.

26. 40 C.F.R. § 52.23 states, in part, that failure to comply with any approved regulatory provision of a SIP or with any permit limitation or condition contained within an

operating permit issued under an EPA-approved program that is incorporated into the SIP, shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Act.

27. The Administrator of the EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation, up to a total of \$270,000, for violations that occurred after March 15, 2004 through January 12, 2009, and up to \$37,500 per day of violation, up to a total of \$295,000, for violations that occurred after January 12, 2009, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

28. Section 113(d)(1) 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.

29. 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

30. A.C.I. owns and operates an industrial asphalt and industrial cutback manufacturing facility at 3000 Gary Avenue, East Chicago, Indiana (the Facility).

31. The Facility has two batch asphalt-blowing processes that emit regulated air pollutants, including VOCs, and therefore are considered to be "emissions units" as that term is defined at 326 IAC 2-7-1(14).

32. The Facility's unrestricted potential emissions of VOCs and particulate matter (PM-10) are each greater than 100 tpy, which therefore qualifies it as a "major source" as that term is defined at 326 IAC 2-7-1(21) and 40 C.F.R. § 70.2.

33. A.C.I. agreed to limit its potential to emit VOCs and PM-10 to less than major source levels through a FESOP the Indiana Department of Environmental Management (IDEM) issued on March 26, 1998. IDEM issued A.C.I.'s current FESOP on April 17, 2008.

34. A.C.I. operates each of its thermal oxidizers (identified as S-1 and S-4) only when the associated asphalt-blowing process is running, per Condition D.1.2(b) of its FESOP. The thermal oxidizers are idle when the processes are in the preheating stage.

35. Using a FLIR GasFind Infra Red (IR) camera during a May 6, 2010, inspection, an EPA inspector observed VOC emissions from the thermal oxidizer S-4 stack when the thermal oxidizer was idle, along with from the open hatch at the top of some storage tanks.

36. When it applied for its FESOP, A.C.I.'s potential-to-emit calculations did not include emissions from the thermal oxidizers during periods when the processes are being preheated; nor did it include emissions vented from open storage tank hatches.

37. A.C.I. failed to account for all potential emissions of VOCs when it applied for its FESOP, in violation of 326 IAC 2-8-3(a), (b), and (c)(3)(A-C) of the Indiana SIP.

38. A.C.I.'s storage tanks are subject to Subpart UU.

39. During the May 6, 2010, inspection, the EPA inspector observed visual emissions from one of A.C.I.'s asphalt storage tanks from 10:05-10:30 a.m. and then again from 1:35-3:05 p.m. A.C.I. stated it was not blowing transfer lines at these times, and that the tank was operating normally.

40. A.C.I. exceeded the opacity limit of its FESOP and Subpart UU, in violation of Sections 111(e) and 502(a) of the Act, 42 U.S.C. §§ 7411(e) and 7661a(a), Condition D.1.4(a) of its FESOP, and 40 C.F.R. § 60.472(c).

41. A.C.I. neither admits nor denies the factual allegations set out above.

Civil Penalty

42. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation, prompt return to compliance, and agreement to perform a supplemental environmental project (SEP), Complainant has determined that an appropriate civil penalty to settle this action is \$10,000.

43. Within 30 days after the effective date of this CAFO, Respondent must pay a \$10,000 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America" to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 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, Respondent must state the case name, the docket number of this CAFO, and the billing document number.

44. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO, and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Reginald Pallesen 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 West Jackson Boulevard
Chicago, Illinois 60604

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

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

46. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 58, below, the 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 Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

47. 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 attorney's 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 Environmental Project

48. Respondent must complete a SEP designed to protect the environment and public health by collecting all fugitive emissions from its asphalt storage tanks and venting the emissions to a control device.

49. At its East Chicago, Indiana facility, Respondent must design and install duct work to collect all fugitive emissions from its eight asphalt storage tanks and vent the emissions to a Brink® Asphalt Vent Package, within 10 months of the effective date of this CAFO.

50. Respondent must spend at least \$84,500 to implement the SEP.

51. Respondent certifies as follows:

I certify that A.C.I. is not required to perform or develop the SEP 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 A.C.I. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that A.C.I. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. 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, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to the EPA within 2 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, or other mechanism for providing federal financial assistance whose performance period has not expired.

52. The EPA may inspect the Facility at any time to monitor A.C.I.'s compliance with this CAFO's SEP requirements.

53. Respondent must maintain copies of the underlying research and data for all reports submitted to the EPA pursuant to this CAFO. Respondent must provide the

documentation of any underlying research and data to the EPA within 7 days of the EPA's request for the information.

54. Respondent must submit a SEP completion report to EPA within 30 days of completion of the SEP. This report 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 costs 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; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

55. 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 44, above.

56. 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.

57. Following receipt of the SEP completion report described in paragraph 53, above, the EPA will 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 the EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and the EPA will seek stipulated penalties under paragraph 59, below.

58. If the 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 the EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, the EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that the EPA imposes in its decision. If Respondent does not complete the SEP as required by the EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 59, below.

59. 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 did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$60,000.
- b. If Respondent did not complete the SEP satisfactorily, but the 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 paragraph 50, above, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 50, above, Respondent must pay a penalty of \$10,000.
- d. If Respondent did not submit timely the SEP completion report required by paragraph 54, above, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$250	1 st through 14 th day
\$500	15 th through 30 th day
\$750	31 st day and beyond

60. The 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.

61. Respondent must pay any stipulated penalties within 15 days of receiving the EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 43, above, and will pay interest and nonpayment penalties on any overdue amounts.

62. Any public statement that Respondent makes referring to the SEP must include the following language: "Asphalt Cutbacks, Inc., undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Asphalt Cutbacks, Inc., for violations of the Clean Air Act."

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

- a. Respondent must notify the EPA in writing within 10 calendar 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 the 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 the EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the 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.
64. 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

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

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

67. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, State, and local laws. Except as provided in paragraph 65, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by the EPA.

68. Respondent certifies that it is complying fully with the Act, the Indiana SIP, Subpart UU, and its FESOP.

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

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

71. 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.

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

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

Asphalt Cutbacks, Inc., Respondent

5/31/2012
Date

Cleopatra Bizoukas
Cleopatra Bizoukas
President
Asphalt Cutbacks, Inc.

United States Environmental Protection Agency, Complainant

6/22/12
Date

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

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of: Asphalt Cutbacks, Inc.

Docket No. CAA-05-2012-0036

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.

6-26-12

Date



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

Consent Agreement and Final Order
In the Matter of: Asphalt Cutbacks, Inc.
Docket No. CAA-05-2012-0036

CERTIFICATE OF SERVICE

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2012-0036 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal service addressed as follows:

Cleopatra Bizoukas
President
Asphalt Cutbacks, Inc.
3000 Gary Avenue
East Chicago, Indiana 46312

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

John Breslin
Regional Judicial Officer
U.S. Environmental Protection Agency
77 West Jackson Boulevard / Mail Code C-14J
Chicago, Illinois 60604

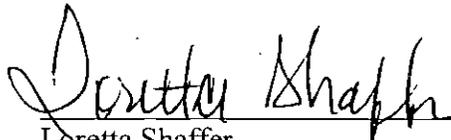
I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Phil Perry
Chief
Indiana Department of Environmental Management
Compliance and Enforcement Branch
Office of Air Quality
100 North Senate Avenue, Room IGCN 1003
Indianapolis, Indiana 46204

Rick Massoels
Environmental Manager
Indiana Department of Environmental Management
Northwest Regional Office
Office of Compliance Support
8380 Louisiana Street
Merrillville, Indiana 46410-9201

Consent Agreement and Final Order
In the Matter of: Asphalt Cutbacks, Inc.
Docket No. GAA-05-2012-0036

on the 27th day of June, 2012.



Loretta Shaffer
Administrative Program Assistant
AECAB, PAS

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