

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

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In the Matter of:

Boro Sand and Stone Corp.  
192 Plain Street  
North Attleborough, MA 02760

Proceeding under Section  
113(d) of the Clean Air Act

Docket No. CAA-01-2020-0003

**CONSENT AGREEMENT AND  
FINAL ORDER**

**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. This is an administrative penalty action brought pursuant to Section 113(d) of the Clean Air Act (“Act” or “CAA”), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), set out at 40 C.F.R. Part 22.

2. The United States Environmental Protection Agency (“EPA”), Region 1 (“Complainant”), alleges that Boro Sand and Stone Corp. (“Boro” or “Respondent”) has violated federal regulations promulgated pursuant to the CAA.

3. Complainant and Respondent (together, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules, this CAFO simultaneously commences and concludes this action.

4. Therefore, before any hearing, and without adjudication of any issue of fact or law, the Parties agree to comply with the terms of this CAFO.

## II. JURISDICTION

5. This CAFO is issued pursuant to Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.
6. EPA and the United States Department of Justice have jointly determined that this matter is appropriate for an administrative penalty assessment. *See* Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).
7. The Regional Judicial Officer is authorized to ratify the Consent Agreement, which memorializes a settlement between Complainant and Respondent. *See* 40 C.F.R. § 22.4(a) and 22.18(b).

## III. GOVERNING LAW

8. Pursuant to Section 111 of the Act, 42 U.S.C. § 7411, which requires EPA to establish standards of performance for new stationary sources, EPA has promulgated the Standards of Performance for Nonmetallic Mineral Processing Plants at 40 C.F.R. Part 60, Subpart OOO (“NSPS Subpart OOO”). *See* 40 C.F.R. §§ 60.670 - 60.676.
9. NSPS Subpart OOO references various general provisions and requirements contained in 40 C.F.R. Part 60, Subpart A, which was also promulgated pursuant to Section 111 of the Act. *See* 40 C.F.R. §§ 60.1 - 60.19.
10. Pursuant to Section 112 of the Act, 42 U.S.C. § 7412, which requires EPA to establish national emissions standards for sources that emit hazardous air pollutants (“HAP”), EPA has promulgated the National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines at 40 C.F.R. Part 63, Subpart ZZZZ (“NESHAP Subpart ZZZZ”). *See* 40 C.F.R. §§ 63.6580 - 63.6675.

11. NESHAP Subpart ZZZZ references various general provisions and requirements contained in 40 C.F.R. Part 63, Subpart A, which was also promulgated pursuant to Section 112 of the Act. *See* 40 C.F.R. §§ 63.1 - 63.16.

12. Sections 113(a) and 113(d)(1) of the Act, 42 U.S.C. §§ 7413(a) and 7413(d)(1), provide, among other things, that EPA may commence an administrative penalty action against any person found in violation of CAA provisions and regulations promulgated thereunder, including NSPS and NESHAP regulations. Pursuant to Section 113(d)(1) of the Act, the Debt Collection Improvement Act of 1996 (as amended in 2015 by Section 701 of Pub. L. 114-74, 31 U.S.C. § 3701), and EPA regulations set out at 40 C.F.R. Part 19, EPA currently may assess penalties of up to \$37,500 per day for each violation of CAA regulations occurring on or before November 2, 2015, and penalties of up to \$48,192 per day for each violation occurring after November 2, 2015.

#### **IV. FACTUAL AND LEGAL BACKGROUND**

13. Boro is a corporation doing business in Massachusetts and is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

14. Boro owns and operates a facility located at 192 Plain Street in North Attleborough, Massachusetts (“Facility”). At the Facility, Boro produces and sells concrete products, washed sand and stone.

15. In its manufacturing processes, Boro crushes and washes stone and other materials, and recycles reclaimed materials (including concrete rubble and asphalt) by crushing them to create an aggregate that is used in concrete products.

16. On August 23, 2018, EPA Region 1 conducted a CAA inspection of Boro’s Facility.

17. On November 7, 2018, EPA Region 1 issued a CAA Notice of Violation (“NOV”) to Boro identifying violations of NSPS Subpart OOO and NESHAP Subpart ZZZZ at the Facility.

18. On December 19, 2018, EPA Region 1 and Boro held a meeting in Boston to discuss the CAA NOV.

## **V. ALLEGED VIOLATIONS OF LAW**

### **A. NSPS Subpart OOO**

#### **1. Applicability**

19. In its recycling operations at the Facility, Boro operates a jaw crusher, cone crusher, and associated conveyor belts (collectively, the “Recycle Plant Rock Crusher”) that was installed at the Facility after August 31, 1983, but by no later than December 31, 2000. The Recycle Plant Rock Crusher has a capacity of greater than 25 tons/hour.

20. The Recycle Plant Rock Crusher is an “affected facility” as defined by NSPS Subpart OOO. *See* 40 C.F.R. §§ 60.670 - 60.671.

21. The owner or operator of an affected facility under NSPS Subpart OOO must comply with standards for particulate emissions and requirements for monitoring, reporting and recordkeeping. *See* 40 C.F.R. §§ 60.672 - 60.676.

22. Accordingly, Boro must comply with NSPS Subpart OOO for the Recycle Plant Rock Crusher.

#### **2. Alleged NSPS Violations**

##### **Count 1: Failure to Provide Notice of Startup**

23. Pursuant to NSPS Subpart OOO, the owner or operator of an affected facility must provide EPA with a written notification of the actual date of initial startup of the facility

postmarked within 15 days after the startup. *See* 40 C.F.R. §§ 60.676(i) and 60.7(a)(3). Boro was required to provide this written notification for the Recycle Plant Rock Crusher by no later than January 15, 2001.

24. Boro provided its written notification of the date of initial startup for the Recycle Plant Rock Crusher on January 21, 2019.

25. Boro thereby violated 40 C.F.R. §§ 60.676(i) and 60.7(a)(3).

**Count 2: Failure to Perform EPA Method 9 Testing**

26. Pursuant to NSPS Subpart OOO, an affected facility with no capture system for particulate matter must meet fugitive emission limits and compliance requirements by no later than 180 days after initial startup of the facility. *See* 40 C.F.R. § 60.672(b) and Table 3 to NSPS Subpart OOO.

27. A crusher with no particulate capture system must meet a fugitive emission limit of 15% opacity and must demonstrate compliance with this emission limit using EPA Method 9. *See* Table 3 to NSPS Subpart OOO and 40 C.F.R. § 60.675(c). Boro was required to conduct EPA Method 9 emission testing for the Recycle Plant Rock Crusher no later than June 29, 2001.

28. Boro conducted EPA Method 9 emission testing for the Recycle Plant Rock Crusher on December 4, 2018.

29. Boro thereby violated 40 C.F.R. §§ 60.672(b) and 60.675(c).

**B. NESHAP Subpart ZZZZ**

**1. Applicability**

30. Until November 2018, Boro operated three Caterpillar diesel engines at the Facility (known as the G1, G2, and G3 Engines, respectively) to supply electric power to the Facility's wash plant and recycle plant operations. The G1 Engine was manufactured in 2004

with a capacity of 896 horsepower. The G2 Engine was manufactured in 1985 with a capacity of 464 horsepower. The G3 Engine was manufactured in 1986 with a capacity of 464 horsepower.

31. Boro's Facility is an "area source" of HAP emissions as defined by NESHAP Subpart ZZZZ at 40 C.F.R. § 63.6675

32. The G1, G2 and G3 Engines are subject to NESHAP Subpart ZZZZ's requirements for an existing, stationary reciprocating internal combustion engines ("RICE") located at an area source of HAP. *See* 40 C.F.R. §§ 63.6590(a) and (a)(1)(iii).

33. The G1, G2 and G3 Engines are compression ignition ("CI") RICE as defined by NESHAP Subpart ZZZZ at 40 C.F.R. §§ 63.6585(a) and 63.6675.

34. The G1, G2 and G3 Engines are subject to NESHAP Subpart ZZZZ's requirements for existing, stationary CI RICE located at an area source of HAP.

35. The G1, G2 and G3 Engines were required to comply with NESHAP Subpart ZZZZ by no later than May 3, 2013. *See* 40 C.F.R. § 63.6595(a)(1).

36. Boro ceased operation of the G1, G2 and G3 engines at the Facility on November 7, 2018.

## **2. Alleged NESHAP Violations**

### **Count 3: Failure to Submit Notifications and Reports**

37. Pursuant to NESHAP Subpart ZZZZ, Boro was required to submit initial notifications to EPA for the G1, G2 and G3 Engines by no later than 120 days after the engines' Subpart ZZZZ compliance date of May 3, 2013. *See* 40 C.F.R. §§ 63.6645(a) and 63.9(b).

38. Accordingly, Boro was required to submit these initial notifications by no later than August 31, 2013.

39. Boro failed to submit initial notifications for the G1, G2 and G3 Engines to EPA by August 31, 2013, and thereby violated 40 C.F.R. §§ 63.6645(a) and 63.9(b).

40. Pursuant to NESHAP Subpart ZZZZ, Boro was required to submit notifications of compliance status (“NOCS”) to EPA for the G1, G2 and G3 Engines by no later than 60 days after the engines’ initial performance tests or other compliance demonstrations. *See* 40 C.F.R. §§ 63.6645(a), 63.9(h) and 63.7(a)(2).

41. Accordingly, Boro was required to submit these NOCS by no later than December 29, 2013.

42. Boro failed to submit NOCS for the G1, G2 and G3 Engines by December 29, 2013, and thereby violated 40 C.F.R. §§ 63.6645(a) and 63.9(h).

43. Pursuant to NESHAP Subpart ZZZZ, Boro was required to submit semi-annual compliance reports to EPA for the G1, G2 and G3 Engines, with the first reports due by no later than January 31, 2014, the date following the end of the first calendar half after the engines’ Subpart ZZZZ compliance date. *See* 40 C.F.R. §§ 63.6650(a) and (b).

44. Boro failed to submit semi-annual compliance reports for the G1, G2 and G3 Engines beginning on January 31, 2014, and thereby violated 40 C.F.R. §§ 63.6650(a) and (b).

**Count 4: Failure to Perform Initial Performance Test or Compliance Demonstration**

45. Pursuant to NESHAP Subpart ZZZZ, Boro was required to perform initial performance tests or other initial compliance demonstrations for the G1, G2 and G3 Engines within 180 days after the engines’ Subpart ZZZZ compliance date of May 3, 2013. *See* 40 C.F.R. §§ 63.6612 and 63.6612(a).

46. Accordingly, Boro was required to perform these initial performance tests or other compliance demonstrations by no later than October 30, 2013.

47. Boro failed to conduct initial perform tests or other compliance demonstrations for the G1, G2 and G3 Engines by October 30, 2013, and thereby violated 40 C.F.R. § 63.6612.

**Count 5: Failure to Meet Emission Limits**

48. Pursuant to NESHAP Subpart ZZZZ, Boro was required to meet specified carbon monoxide (“CO”) emission limits (either CO concentration or CO reduction limits) for the G1, G2 and G3 Engines by no later than May 3, 2013. *See* 40 C.F.R. §§ 63.6603(a) and 63.6595(a), and Table 2d to NESHAP Subpart ZZZZ at 2.a, 2.b, 3.a. and 3.b.

49. Boro failed to meet the CO emissions limits specified in NESHAP Subpart ZZZZ for the G1, G2 and G3 Engines, and thereby violated 40 C.F.R. § 63.6603(a) and Table 2d to NESHAP Subpart ZZZZ.

**VI. TERMS OF SETTLEMENT**

50. Respondent certifies that it is presently operating in compliance with all applicable terms of NSPS Subpart OOO and NESHAP Subpart ZZZZ.

51. Respondent admits, for the purposes of this proceeding, that Complainant has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states claims upon which relief may be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue.

52. Respondent waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its right to appeal the Final Order.

53. Without admitting or denying the facts and violations alleged in Section V of this CAFO, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of the civil penalty set forth herein. The provisions of this CAFO shall be binding on Respondent and Respondent’s officers, directors, agents, employees, successors and assigns.

54. Taking into account the particular facts and circumstances of this matter, with specific reference to the penalty factors set out in Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in this CAFO in the amount of \$90,112, plus applicable interest, as specified below.

55. In accordance with 40 C.F.R. § 13.18 and EPA's *Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Action* (June 29, 2015), EPA has determined that an alternative payment mechanism is in the best interest of the United States and has agreed to allow Respondent to pay the civil penalty over a six month period in six equal installments, with interest divided equally among them, as specified in Paragraphs 56 and 57 below.

56. Within thirty (30) days after the effective date of this CAFO, Respondent shall make its first penalty payment by submitting a company, bank, cashier's, or certified check in the amount of \$15,050, payable to the order of the "Treasurer, United States of America." The check should be sent via regular mail to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

or, Respondent may make payment via express mail to:

U.S. Bank  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Respondent shall include the case name and docket number (“In the Matter of Boro Sand and Stone Corp., Docket No. CAA-01-2020-0003”) on the face of the check and in an accompanying cover letter, and shall simultaneously provide copies of the check and cover letter to:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square, Suite 100  
Mail Code ORC 4-6  
Boston, MA 02109-3912

and

Steven J. Viggiani  
Senior Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square, Suite 100  
Mail Code ORC 4-3  
Boston, MA 02109-3912

57. Respondent shall make its second and subsequent penalty payments of \$15,050 in accordance with the procedures set out in Paragraph 56 and on the schedule set out below.

Respondent shall make its second payment within 60 days of the CAFO’s effective date; its third payment, within 90 days of the CAFO’s effective date; its fourth payment, within 120 days of the CAFO’s effective date; its fifth payment, within 150 days of the CAFO’s effective date, and its sixth and final payment, within 180 days of the CAFO’s effective date.

58. Pursuant to 31 U.S.C. § 3717, EPA 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.

59. In the event that Respondent does not fully pay the civil penalty required by Paragraphs 54 through 57 of this CAFO when due, Respondent will be subject to an action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to compel payment, plus

interest, enforcement expenses, and a nonpayment penalty. Interest on any unpaid portion of the civil penalty shall accrue at the “underpayment rate” established pursuant to 26 U.S.C § 6621(a)(2) beginning from the penalty’s original due date. An additional charge will be assessed to cover the United States’ enforcement expenses, including attorney’s fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

60. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA for the violations specifically alleged in Section V of this CAFO. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and CAA regulations, and other federal, state or local laws or statutes, nor shall it restrict EPA’s authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit EPA’s authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to public health, welfare or the environment.

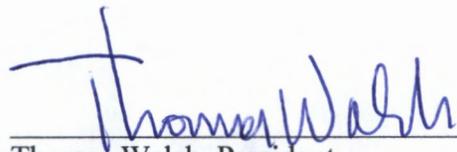
61. Except as provided in Paragraph 59 of this CAFO, each Party shall bear its own costs and attorney’s fees incurred in this proceeding, and specifically waives any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

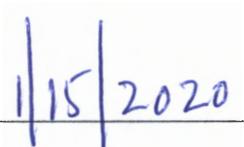
62. The terms, conditions and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and approval of the Regional Judicial Officer.

63. Each of the Parties' undersigned representatives certifies that he or she is fully authorized by his or her respective Party to enter into the terms and conditions of this CAFO and to legally bind that Party to this CAFO.

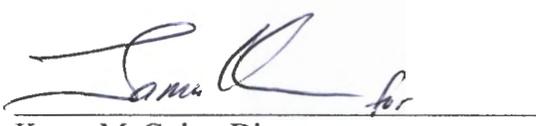
64. In accordance with 40 C.F.R. § 22.13(b), the effective date of this CAFO is the date on which this CAFO is filed with the Regional Hearing Clerk.

FOR RESPONDENT:

  
\_\_\_\_\_  
Thomas Walsh, President  
Boro Sand and Stone Corp.

  
\_\_\_\_\_  
Date

FOR COMPLAINANT:

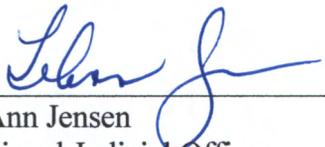
Handwritten signature of Karen McGuire in black ink, written over a horizontal line. The signature is stylized and includes the word "for" at the end.

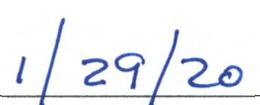
Karen McGuire, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 1

1/28/20  
Date

**FINAL ORDER**

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules, the forgoing Consent Agreement is incorporated by reference into this Final Order and is hereby ratified. Respondent Boro is ordered to pay the civil penalty amount specified in the Consent Agreement in the matter indicated therein. The terms of the CAFO will become effective on the date that it is filed with the Regional Hearing Clerk.

  
\_\_\_\_\_  
LeAnn Jensen  
Regional Judicial Officer  
U.S. EPA, Region 1

  
\_\_\_\_\_  
Date

In the Matter of Boro Sand and Stone Corp.,  
Docket No. CAA-01-2020-0003

**CERTIFICATE OF SERVICE OF CONSENT AGREEMENT AND FINAL ORDER**

I certify that I hand-delivered to the office of the Regional Hearing Clerk of EPA Region 1 the original and one copy of the Consent Agreement and Final Order (“CAFO”) in the above-captioned case, together with a cover letter, and arranged to send a copy of the CAFO and cover letter via certified mail to Respondent through Respondent’s counsel at the address set forth below:

VIA HAND-DELIVERY (original and one copy):

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

VIA CERTIFIED MAIL (copy):

Robin L. Main  
Hinckley Allen  
100 Westminster Street, Suite 1500  
Providence, Rhode Island 02903-2319



Steven J. Viggiani  
Senior Enforcement Counsel  
EPA Region 1

  
Date