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75 Hawthorne Street
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6

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
REGION IX
9

10 In the matter of:) Docket No. EPCRA-09-2024-0093
11)
12 All American Asphalt,) CONSENT AGREEMENT
AND FINAL ORDER
13 Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)
14

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency (“EPA”), Region IX, and All
17 American Asphalt (“Respondent”) agree to settle this matter and consent to the entry of this
18 Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and
19 concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
20

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative action brought under Section 325(c) of the Emergency
23 Planning and Community Right-To-Know Act (“EPCRA”), 42 U.S.C. § 11045(c), for
24 assessment of a civil administrative penalty against Respondent for its failure to submit timely,
25 complete, and accurate Toxic Chemical Release Inventory Forms for calendar years 2018
26 through 2021 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing
27 regulations set forth at 40 C.F.R. Part 372.

28 2. Complainant is the Director of the Enforcement and Compliance Assurance Division,
EPA Region IX, who has been duly delegated the authority to bring this action and to sign a

1 consent agreement settling this action pursuant to an EPA Delegation of Authority dated
2 February 11, 2013.

3 3. Respondent is All American Asphalt, a California corporation with headquarters
4 offices located at 400 East Sixth Street in Corona, California, 92879.

5 **B. STATUTORY AND REGULATORY BASIS**

6 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA
7 promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for
8 the submission of information relating to the release of toxic chemicals under EPCRA Section
9 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.

10 5. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.
11 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and
12 the State in which the facility is located a chemical release form published under Section 313(g)
13 of EPCRA for each toxic chemical or toxic chemical category listed under Section 313(c) of
14 EPCRA and 40 C.F.R. § 372.65 that it manufactured, processed, or otherwise used if: (i) the
15 facility has ten or more full-time employees; (ii) the facility is in North American Industry
16 Classification System Code 324121; and (iii) the facility manufactured, processed, or otherwise
17 used during the calendar year the listed toxic chemical or toxic chemical category in excess of the
18 threshold quantity established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25 (or 40
19 C.F.R. § 372.28 for a chemical of special concern).

20 6. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a
21 uniform Toxic Chemical Release Inventory Form (hereinafter referred to as a "Form R") for
22 facilities that are subject to the reporting requirements of Section 313. Sections 313(a) and (b) of
23 EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for
24 activities involving a toxic chemical or toxic chemical category that occurred during a calendar
25 year must be submitted on or before July 1 of the next year.

26 7. Pursuant to Section 313(g)(1)(B) of EPCRA, 42 U.S.C. § 11023(g)(1)(B), these Form
27 Rs must be certified by Respondent as "complete" and "accurate" as to the release information
28 provided therein.

1 8. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty
2 Inflation Adjustment Rule, 40 C.F.R. Part 19 (as amended by 88 Fed. Reg. 89309 (December 27,
3 2023)), provide that any person who violates any requirement of Section 313 shall be liable to the
4 United States for a civil penalty in an amount not to exceed \$69,733 for each such violation that
5 occurred after November 2, 2015, where penalties are assessed on or after December 27, 2023.

6 C. ALLEGED VIOLATIONS

7 9. Respondent is a corporation and therefore fits within the definition of a “person,” as
8 provided in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

9 10. At all times relevant to this matter, Respondent owned and operated a facility (the
10 “Facility”) in the business of manufacturing asphalt, located at 10600 Jeffrey Road in Irvine,
11 California, that fits within the definition of a “facility,” as provided in Section 329(4) of EPCRA,
12 42 U.S.C. § 11049(4).

13 11. At all times relevant to this matter, the Facility had 10 or more “full-time
14 employees,” as that term is defined at 40 C.F.R. § 372.3.

15 12. At all times relevant to this matter, the Facility was in North American Industry
16 Classification System Code 324121.

17 13. During the calendar year 2018, Respondent “processed,” as that term is defined in 40
18 C.F.R. § 372.3, approximately 936 pounds of polycyclic aromatic compounds, a toxic chemical
19 category listed under 40 C.F.R. § 372.65, at the Facility. This quantity exceeded the 100 pound
20 threshold for reporting “processing” of that chemical of special concern established under
21 Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

22 14. During the calendar year 2019, Respondent “processed,” as that term is defined in 40
23 C.F.R. § 372.3, approximately 1,110 pounds of polycyclic aromatic compounds, a toxic chemical
24 category listed under 40 C.F.R. § 372.65, at the Facility. This quantity exceeded the 100 pound
25 threshold for reporting “processing” of that chemical of special concern established under
26 Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

27 15. During the calendar year 2020, Respondent “processed,” as that term is defined in 40
28 C.F.R. § 372.3, approximately 834 pounds of polycyclic aromatic compounds, a toxic chemical

1 category listed under 40 C.F.R. § 372.65, at the Facility. This quantity exceeded the 100 pound
2 threshold for reporting “processing” of that chemical of special concern established under
3 Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

4 16. During the calendar year 2021, Respondent “processed,” as that term is defined in 40
5 C.F.R. § 372.3, approximately 838 pounds of polycyclic aromatic compounds, a toxic chemical
6 category listed under 40 C.F.R. § 372.65, at the Facility. This quantity exceeded the 100 pound
7 threshold for reporting “processing” of that chemical of special concern established under
8 Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

9 17. Respondent was required to submit timely, complete, and accurate Form Rs for
10 polycyclic aromatic compounds to EPA and the State of California for: (1) calendar year 2018
11 on or before July 1, 2019; (2) calendar year 2019 on or before July 1, 2020; (3) calendar year
12 2020 on or before July 1, 2021; and (4) calendar year 2021 on or before July 1, 2022.

13 18. For calendar years 2018, 2019, 2020, and 2021, Respondent filed timely Form Rs for
14 polycyclic aromatic compounds by the above-mentioned deadlines, but failed to file complete
15 and accurate Form Rs with respect to the amounts of polycyclic aromatic compounds “released,”
16 as that term is defined in 40 C.F.R. § 372.3, by Respondent in calendar years 2018, 2019, 2020,
17 and 2021, in contravention of Section 313(g)(1)(B) of EPCRA, 42 U.S.C. § 11023(g)(1)(B),

18 19. Respondent’s failures to submit complete and accurate Form Rs for polycyclic
19 aromatic compounds to EPA and the State of California for calendar years 2018, 2019, 2020, and
20 2021, constitute four separate violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40
21 C.F.R. Part 372.

22 D. RESPONDENT’S ADMISSIONS

23 20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
24 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
25 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
26 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
27 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
28 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the

1 proposed Final Order contained in this CAFO.

2 E. CIVIL ADMINISTRATIVE PENALTY

3 21. In full and final settlement of the violations specifically alleged in Section I.C of this
4 CAFO, Respondent shall pay a civil administrative penalty of FIFTY-THREE THOUSAND,
5 ONE HUNDRED, AND FIFTEEN DOLLARS (\$53,115). Respondent shall pay this civil
6 penalty within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid
7 by remitting a certified or cashier's check, including the name and docket number of this case,
8 for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other
9 methods listed below) and sent as follows:

10 Regular Mail:

11 U.S. Environmental Protection Agency
12 Fines and Penalties
13 Cincinnati Finance Center
14 PO Box 979077
15 St. Louis, MO 63197-9000

16 Wire Transfers:

17 Wire transfers must be sent directly to the Federal Reserve Bank in New
18 York City with the following information:
19 Federal Reserve Bank of New York
20 ABA = 021030004
21 Account = 68010727
22 SWIFT address = FRNYUS33
23 33 Liberty Street
24 New York, NY 10045
25 Beneficiary = U.S. Environmental Protection Agency

26 Certified or Overnight Mail:

27 U.S. Bank
28 1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as Remittance Express or REX):

Automated Clearinghouse (ACH) payments to EPA can be made through
the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account = 31006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

1 Physical location of U.S. Treasury facility:

2 5700 Rivertech Court
3 Riverdale, MD 20737

4 Remittance Express (REX) = (866) 234-5681

5 On Line Payment:

6 This payment option can be accessed from the information below:

7 www.pay.gov
8 Enter "SFO 1.1" in the search field
9 Open form and complete required fields

10 If clarification regarding a particular method of payment remittance is
11 needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

12 A copy of each check, or notification that the payment has been made by one of the other
13 methods listed above, including proof of the date payment was made, shall be sent with a
14 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
15 following regular mail or email addresses:

16 Regional Hearing Clerk
17 Office of Regional Counsel (ORC-1)
18 U.S. Environmental Protection Agency, Region IX
19 75 Hawthorne Street
20 San Francisco, CA 94105
21 R9HearingClerk@epa.gov

22 Andrew Chew
23 Air Section
24 Enforcement and Compliance Assurance Division (ENF-2-1)
25 U.S. Environmental Protection Agency, Region IX
26 75 Hawthorne Street
27 San Francisco, CA 94105
28 chew.andrew@epa.gov

22. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
from Respondent's federal, state, or local taxes, nor shall Respondent allow or otherwise
facilitate any other person to use such payment as a tax deduction.

23. If Respondent fails to pay the assessed civil administrative penalty of FIFTY-THREE
THOUSAND, ONE HUNDRED, AND FIFTEEN DOLLARS (\$53,115) as identified in
Paragraph 21, by the deadline specified in that Paragraph, then Respondent shall pay a stipulated

1 penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the assessed
2 penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all accrued
3 stipulated penalties are paid and shall become due and payable upon EPA's written request.
4 Failure to pay the civil administrative penalty specified in Paragraph 21 by the deadline specified
5 in that Paragraph may also lead to any or all of the following actions:

6 (1) EPA may refer the debt to a credit reporting agency, a collection
7 agency, or to the Department of Justice for filing of a collection action in the appropriate United
8 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
9 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
10 collection proceeding.

11 (2) The U.S. Government may collect the debt by administrative offset
12 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
13 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
14 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
15 C.F.R. §§ 13(C) and 13(H).

16 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
17 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
18 business with EPA or engaging in programs EPA sponsors or funds.

19 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
20 Government may assess interest, administrative handling charges, and nonpayment penalties
21 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
22 civil administrative penalty specified in Paragraph 21 by the deadline specified in that Paragraph.

23 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
24 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
25 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
26 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
27 (30) days of the effective date of this CAFO.

28 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §

1 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
2 either actual or average cost incurred (including both direct and indirect costs), for every month
3 in which any portion of the assessed penalty is more than thirty (30) days past due.

4 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
5 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
6 may be assessed on all debts more than ninety (90) days delinquent.

7 F. CERTIFICATION OF COMPLIANCE

8 24. In executing this CAFO, Respondent certifies that (1) it has now fully completed and
9 submitted to EPA all of the required accurate Toxic Chemical Release Inventory Forms in
10 compliance with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated
11 thereunder; and (2) it is in compliance with all other EPCRA requirements at all facilities under
12 its control. Under 18 U.S.C. § 1001, submitting false or misleading information can result in
13 significant penalties, including the possibility of fines and imprisonment for knowing submission
14 of such information.

15 G. RETENTION OF RIGHTS

16 25. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
17 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
18 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
19 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
20 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
21 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
22 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
23 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

24 26. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
25 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
26 and permits.

27 H. ATTORNEYS' FEES AND COSTS

28 27. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in

1 this proceeding.

2 I. EFFECTIVE DATE

3 28. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
4 effective on the date that the Final Order contained in this CAFO, having been approved and
5 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

6 J. BINDING EFFECT

7 29. The undersigned representative of Complainant and the undersigned representative of
8 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
9 of this CAFO and to bind the party he or she represents to this CAFO.

10 30. The provisions of this CAFO shall apply to and be binding upon Respondent and its
11 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
12 and assigns.

13 K. TAX REPORTING INFORMATION

14 31. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send
15 to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines,
16 Penalties, and Other Amounts”) with respect to any court order or settlement agreement
17 (including administrative settlements), that require a payor to pay an aggregate amount that EPA
18 reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law
19 or the investigation or inquiry into the payor’s potential violation of any law, including amounts
20 paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA
21 is further required to furnish a written statement, which provides the same information provided
22 to the IRS, to each payor (*i.e.*, a copy of IRS Form 1098-F). Failure to comply with providing
23 IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject
24 Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. §
25 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these
26 obligations, EPA herein requires, and Respondent herein agrees, that:

- 27 (1) Respondent shall complete an IRS Form W-9 (“Request for Taxpayer
28

1 Identification Number and Certification”), which is available at
2 <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

3 (2) Respondent shall therein certify that its completed IRS Form W-9
4 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of
5 a TIN;

6 (3) Respondent shall email its completed Form W-9 to EPA's Cincinnati
7 Finance Center at sherrer.dana@epa.gov, within 30 days after the Final Order ratifying this
8 Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

9 (4) In the event that Respondent has certified in its completed IRS Form
10 W-9 that it has applied for a TIN and that a TIN has not been issued to Respondent within 30
11 days after the Effective Date, then Respondent, using the same email address identified in the
12 preceding sub-paragraph, shall further:

13 (a) notify EPA’s Cincinnati Finance Center of this fact, via
14 email, within 30 days after the 30 days after the Effective Date of this Order per Paragraph 28;
15 and

16 (b) provide EPA’s Cincinnati Finance Center with
17 Respondent’s TIN, via email, within five (5) days of Respondent’s issuance and receipt of the
18 TIN.

FOR RESPONDENT ALL AMERICAN ASPHALT:

5/20/2024
DATE


JOHN GARDNER
Plant Manager
All American Asphalt

FOR COMPLAINANT EPA:

DATE

AMY MILLER-
BOWEN

Digitally signed by AMY MILLER-
BOWEN
Date: 2024.07.08 12:05:31 -07'00'

AMY C. MILLER
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

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II. FINAL ORDER

EPA and All American Asphalt having entered into the foregoing Consent Agreement,
IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-09-2024-0093) be
entered, and Respondent shall pay a civil administrative penalty in the amount of FIFTY-THREE
THOUSAND, ONE HUNDRED, AND FIFTEEN DOLLARS (\$53,115) and comply with the
terms and conditions set forth in the Consent Agreement.

DATE _____

BEATRICE WONG
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing Consent Agreement and Final Order in the matter of All
3 American Asphalt (Docket No. EPCRA-09-2024-0093) was filed with the Regional Hearing
4 Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and
5 correct copy of the same was sent to the following parties via electronic mail, as indicated below:

6 **RESPONDENT:** John Gardner
7 Plant Manager
8 All American Asphalt
9 400 East Sixth Street
10 Corona, CA 92879
11 JGardner@allamericanasphalt.com

12 **COMPLAINANT:** Edgar Paul Coral
13 Assistant Regional Counsel
14 Air & Toxics Section I (ORC-2-1)
15 75 Hawthorne Street
16 San Francisco, CA 94105
17 US Environmental Protection Agency, Region IX
18 Coral.Edgar@epa.gov

19 _____
20 Ponly Tu Date
21 Regional Hearing Clerk
22 U.S. EPA - Region IX
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