

FILED

September 25, 2024

1:07 P.M. PST

**U.S. EPA REGION 10
HEARING CLERK**

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. CAA-CAA-10-2024-0242
)
OWENS CORNING ROOFING AND) **CONSENT AGREEMENT**
ASPHALT, LLC)
)
)
Portland, Oregon)
)
Respondent.)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Owens Corning Roofing and Asphalt, LLC (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. On April 26, 2024, EPA notified Respondent and Oregon that EPA had found that Respondent committed the alleged violations described in Part III of this Consent Agreement.

2.4. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

New Source Performance Standard for Asphalt Processing and Asphalt Roofing Manufacture

3.1. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA has promulgated New Source Performance Standards (NSPS) for specified categories of stationary sources of air pollutants that are “new sources.” A “new source” is defined as “a stationary source, the construction or modification of which is commenced after the publication of NSPS regulations or proposed regulations that are applicable to such source.” 42 U.S.C. § 7411(a)(2). A “stationary source” is defined as including “buildings, structures, facilities or installations that emit or may emit any air pollutant.” 42 U.S.C. § 7411(a)(3). The term “modification” means

“any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.” 42 U.S.C. § 7411(a)(4).

3.2. NSPS regulations apply to the owner or operator of any stationary source that contains an “affected facility,” the construction or modification of which is commenced after the date of publication of an NSPS (or, if earlier, the date of publication of any proposed standard) applicable to that facility. 40 C.F.R. § 60.1. “Affected facility” is defined, with reference to a stationary source, as any apparatus to which an NSPS is applicable. 40 C.F.R. § 60.2.

3.3. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the operation of any “new source” of air pollutants in violation of an NSPS applicable to such source. Thus, a violation of an NSPS requirement is a violation of Section 111(e) of the CAA.

3.4. Pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, on August 6, 1982, EPA promulgated the NSPS for Asphalt Processing and Asphalt Roofing Manufacture at 40 C.F.R. Part 60, Subpart UU. *See* 47 Fed. Reg. 34,137.

3.5. 40 C.F.R. Part 60, Subpart UU, defines an “affected facility” as, *inter alia*, each asphalt storage tank that commenced construction or modification after November 18, 1980. 40 C.F.R. § 60.470.

3.6. The term “asphalt storage tank” means any tank used to store asphalt at asphalt roofing plants, petroleum refineries, and asphalt processing plants. 40 C.F.R. § 60.471.

General Findings

3.7. Respondent is a person as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.8. At all times relevant to this Consent Agreement, Respondent was the “owner” and “operator” of the Owens Corning Roofing and Asphalt, LLC facility at 11910 N.W. St. Helens Road, Portland, Oregon 97231 (the “Facility”).

3.9. At all times relevant to this Consent Agreement, Respondent’s Facility was an “affected facility” as that term is used in 40 C.F.R. §§ 60.2 and 60.470.

3.10. At all times relevant to this Consent Agreement, Respondent’s Facility was subject to the regulations at 40 C.F.R. Part 60, Subpart UU.

Claim 1: Failure to Comply with Storage Tank Opacity Limit

3.11. Pursuant to 40 C.F.R. § 60.472(c), the owner or operator of an affected facility 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.

3.12. On June 21, 2023, EPA inspectors observed visible emissions to the ambient air from a vacuum breaker on the top of Tank 2 at Respondent’s Facility. The emissions were observed during loading of flux from railcars to the tank and were not the result of line clearing activities.

3.13. Tank 2 is an “asphalt storage tank” as that term is used in 40 C.F.R. § 60.471.

3.14. By causing emissions from Tank 2 in excess of 0 percent opacity, Respondent violated 40 C.F.R. § 60.472(c).

3.15. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$121,275 per day of violation.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), including Respondent's good faith efforts to comply. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$33,589 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: www.epa.gov/financial/makepayment. Payments made by check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

*Address format for standard delivery
(no delivery confirmation requested):*

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, MO 63197-9000

*Address format for signed receipt confirmation
(FedEx, DHL, UPS, USPS certified, registered,
etc):*

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

**In the Matter of: OWENS CORNING ROOFING AND
ASPHALT, LLC
Docket Number: CAA-10-2024-0242
Consent Agreement
Page 5 of 9**

**U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101**

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Alyson Skeens
U.S. Environmental Protection Agency
Region 10
Skeens.alyson@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten

percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

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

a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at Henderson.Jessica@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

4.11. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.12. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.13. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.14. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.15. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.16. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.17. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

JAMES COCKRELL, Plant Leader
Linnton Trumbull Asphalt Plant
Owens Corning Roofing and Asphalt, LLC

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2024-0242
)	
OWENS CORNING ROOFING AND)	FINAL ORDER
ASPHALT, LLC)	
)	
Portland, Oregon)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

IT IS SO ORDERED.

Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Owens Corning Roofing and Asphalt, LLC, Docket No.: CAA-10-2024-0242** was filed with the Regional Hearing Clerk and that a true and correct copy was served on the date specified below to the following addressees via electronic mail:

Shirin Gallagher
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

Gallagher.shirin@epa.gov

James Cockrell
Plant Leader, Linnton Trumbull Asphalt Plant
Owens Corning Roofing and Asphalt, LLC
11910 NW St Helens Road
Portland, Oregon 97231

James.Cockrell@owenscorning.com

Regional Hearing Clerk
EPA Region 10