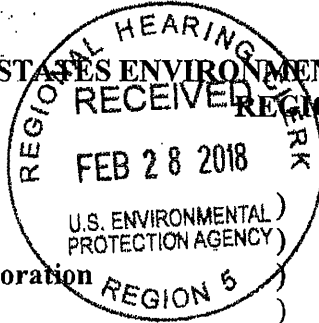


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
RECEIVED REGION 5



In the Matter of:

Ajax Materials Corporation  
Romulus, Michigan,

Respondent.

Docket No. CAA-05-2018-0006

Proceeding to Assess a Civil Penalty  
Under Section 113(d) of the Clean Air Act,  
42 U.S.C. § 7413(d)

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 Ajax Materials Corporation (Ajax), a corporation doing business in Michigan.

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.

8. Respondent neither admits nor denies the factual allegations in this CAFO. The execution of the agreement is for settlement purposes only and does not constitute an admission by Ajax that a violation occurred.

9. 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**

10. Under Section 111 of the CAA, EPA promulgated the Standards of Performance (NSPS) for Hot Mix Asphalt Facilities at 40 C.F.R. §§ 60.90 through 60.93.

11. The owner or operator of an existing affected facility was required to comply with the requirements of 40 C.F.R. §§ 60.90 through 60.93 within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of the facility. 40 C.F.R. §§ 60.8(a) and 60.92(a).

12. The NSPS for Hot Mix Asphalt Facilities applies to each hot mix asphalt facility. For the purposes of 40 C.F.R. Part 60, Subpart I, and relevant to this Order, a hot mix asphalt facility is comprised, in part, of dryers and systems for mixing hot mix asphalt and the associated emission control systems. 40 C.F.R. § 60.90.

13. The NSPS, at 40 C.F.R. § 60.92, prohibits the owner or operator of Ajax from discharging or causing the discharge into the atmosphere from any affected facility any gases which exhibit 20 percent opacity, or greater.

14. Under Section 111 of the CAA, EPA promulgated the General Provisions to the New Source Performance Standards (NSPS Subpart A) at 40 C.F.R. §§ 60.1 through 60.19.

15. The owner or operator of an existing affected facility was required to comply with the requirements of 40 C.F.R. §§ 60.1 through 60.19 by the compliance date of the applicable NSPS.

16. NSPS Subpart A applies to each affected facility which was constructed after the date of publication of an applicable standard under 40 C.F.R. § 60.1(a).

17. The NSPS Subpart A, at 40 C.F.R § 60.11(d), requires the owner or operator of an affected facility to, at all times and to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

18. On December 26, 2007, EPA approved Mich. Admin. Code R. 336.1912 governing emission limitations and prohibitions for miscellaneous emissions sources as part of the federally enforceable State Implementation Plan (SIP) for Michigan. 72 Fed. Reg. 60783 (12/26/2007).

19. R. 336.1912 requires, in part, that the owner or operator of a source shall operate process equipment in a manner consistent with good air pollution control practices for minimizing emissions during periods of abnormal conditions, start-up, shutdown, and malfunctions.

20. On July 3, 2006, EPA approved Mich. Admin. Code R. 336.1301 governing emissions limitations and prohibitions for particulate matter emissions as part of the federally enforceable SIP for Michigan. 71 Fed. Reg. 31093 (07/03/2006).

21. R. 336.1301(1)(b), provides, in part, that a person shall not cause or permit process equipment to discharge visible emissions greater than an opacity limit specified by an applicable federal new source performance standard.

22. On May 6, 1980, EPA approved Mich. Admin. Code R. 336.1910 governing proper maintenance and operation of air-cleaning devices as part of the federally enforceable SIP for Michigan. 45 Fed. Reg. 29790 (05/06/1980).

23. R. 336.1910 provides, in part, that air-cleaning devices shall be maintained and operated in a satisfactory manner and in accordance with existing rules and laws.

24. On June 5, 2008, the Michigan Department of Environmental Quality (MDEQ) issued Permit to Install No. 310-06B to Ajax Materials Corporation for its Romulus, Michigan facility.

25. Permit to Install No. 310-06B, General Condition 7 requires Ajax to provide notice to MDEQ of an abnormal condition or malfunction that results in emissions of any air contaminant continuing for more than two hours in excess of an applicable standard or limitation. Notice must be provided within two days of the discovery of the abnormal condition and written reports must be filed with MDEQ within 10 days after the abnormal condition has been corrected.

26. Permit to Install No. 310-06B, General Condition Item 11 requires Ajax to limit visible emissions from process equipment subject to a federal new source performance standard to less than the limitation specified in the federal new source performance standard.

27. Permit to Install No. 310-06B, EUHMAPLANT1 Item 1.10 prohibits operation of the EUHMAPLANT unless the Preventative Maintenance Program specified in Appendix B of the permit is implemented and maintained.

28. Permit to Install No. 310-06B, EUHMAPLANT Item 1.24 requires that Ajax conduct all necessary maintenance and make all necessary attempts to keep all drum mix/burner and fabric filter dust collector components of the EUHMAPLANT maintained and operating in a satisfactory manner at all times.

29. Permit to Install No. 310-06B, Appendix B, Item 5, requires that in the event visible emissions that appear to exceed the standard allowed in General Condition Item 11 are observed at the discharge point of the stack, that a certified visible emissions reader verify the emission density. If no certified visible emissions reader can be on-site within 60 minutes of observing the visible emissions, operations shall be ceased immediately and the cause of the visible emissions determined and corrected prior to operating the plant again.

30. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$44,539 per day of violation up to a total of \$356,312 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

31. 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.

32. 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**

33. Ajax owns and operates a hot mix asphalt plant at 8744 S. Inkster Road, Romulus, MI. The hot mix asphalt plant consists of a number of pieces of equipment that generate air pollution and are subject to the provisions of the Act. The equipment includes, among other things, a 700 ton per hour hot mix asphalt counterflow drum dryer/mixer that uses a fabric filter dust collector to control emissions of particulate matter referred to as EUHMAPLANT.

34. Ajax's EUHMAPLANT is an affected facility under NSPS Subpart A and the NSPS for Hot Mix Asphalt Facilities because it is part of a hot mix asphalt facility that commenced construction or modification after June 11, 1973. 40 C.F.R. § 60.90.

35. Emissions from Ajax's EUHMAPLANT are subject to the requirement to operate process equipment in a manner consistent with good air pollution control practices in the Michigan SIP at R. 336.1912 entitled "Abnormal conditions, start-up, shutdown, and malfunction of a source, process, or process equipment, operating, notification, and reporting requirements."

36. Emissions from Ajax's EUHMAPLANT are subject to the opacity limit in the Michigan SIP at R. 336.1301(b).

37. Emissions from Ajax's EUHMAPLANT are subject to the requirement to maintain and operate air-cleaning devices in the Michigan SIP at R. 336.1910 entitled "Air-cleaning devices."

38. On at least five occasions on November 4, 2015, Ajax allegedly failed to limit the opacity from the EUHMAPLANT to less than 20% as a six-minute average, in violation of the opacity limit at 40 C.F.R. § 60.92(a)(2), R. 336.1301(b) of the Michigan SIP, and Permit No. 310-06B General Condition Item 11.

39. On November 4 and 5, 2015, Ajax allegedly violated R. 336.1910, R. 336.1911 of the Michigan SIP and Permit No. 310-06B EUHMAPLANT Item 1.24 by not maintaining and operating the EUHMAPLANT fabric filter dust collector in a satisfactory manner at all times.

40. On November 4 and 5, 2015, Ajax allegedly violated Permit No. 310-06B Appendix B Item 5 by failing to (1) cease operations when no certified visible emissions readings had occurred within 60 minutes of visible emissions that appeared to be in excess of the

opacity limit, (2) determine the cause of the visible emissions before operating the plant again, and (3) correct the visible emissions prior to operating the plant again.

41. By failing to follow the Preventative Maintenance Program specified in Appendix B of Permit No. 310-06B, Ajax allegedly violated the requirement at 40 C.F.R. § 60.11(d) to maintain and operate the baghouse controlling emissions from EUHMAPLANT in a manner consistent with good air pollution control practice for minimizing emissions. By continuing to operate the EUHMAPLANT in contradiction of the Preventative Maintenance Program specified in Appendix B of the permit, Ajax allegedly violated the requirements of R. 336.1910, R. 336.1911 of the Michigan SIP and Permit No. 310-06B EUHMAPLANT Item 1.10.

42. On June 29, 2016, Ajax conducted a performance test to measure particulate matter and visible emissions from EUHMAPLANT. The performance test demonstrated that EUHMAPLANT was in compliance with its emission limits for particulate matter and opacity.

43. On September 26, 2016, EPA issued to Ajax a Notice and Finding of Violation alleging that it violated the NSPS for Hot Mix Asphalt Plants, its operating permit, and the Michigan SIP as outlined in paragraphs 38 through 41 above.

44. On October 28, 2016, representatives of Ajax and EPA discussed the September 26, 2016 Notice of Violation.

#### **Civil Penalty**

45. 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 and Ajax's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$68,707.

46. Within 30 days after the effective date of this CAFO, Respondent must pay a \$68,707 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

47. 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

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

49. 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.

50. 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).

#### **General Provisions**

51. 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 e-mail addresses: zander.rachel@epa.gov (for Complainant), and mboden@ajaxpaving.com and gotthelf@butzel.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

53. 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.

54. 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 52, above,

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

55. Respondent certifies that it is complying fully with the New Source Performance Standards for Hot Mix Asphalt Facilities under 40 C.F.R. §§ 60.90 through 60.93, the Michigan SIP, and Permit to Install No. 310-06B.

56. 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).

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

58. 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.

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

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

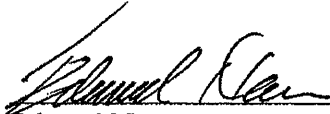
**Ajax Materials Corporation, Respondent**

02/14/2018  
Date

Mark E Boden  
Mark Boden, Vice President  
Ajax Materials Corporation

**United States Environmental Protection Agency, Complainant**

2/23/18  
Date

  
\_\_\_\_\_  
Edward Nam  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Ajax Materials Corporation**  
**Docket No. CAA-05-2018-0006**

**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.

February 27, 2018  
Date

Ann L. Coyle  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the matter of: Ajax Materials Corporation  
Docket Number: CAA-05-2018-0006

**CERTIFICATE OF SERVICE**

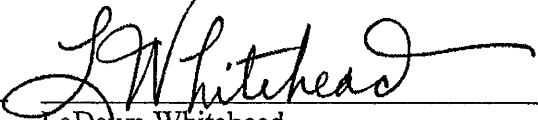
I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CAA-05-2018-0006**, which was filed on *2/28/2018*, in the following manner to the following addressees:

Copy by E-mail to Respondent: Mark Boden  
mboden@ajaxpaving.com

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

Copy by E-mail to Attorney for Respondent: Beth Gotthelf  
gotthelf@butzel.com

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

Dated: *February 28, 2018*   
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5