

STATE OF NEW MEXICO
NEW MEXICO ENVIRONMENT DEPARTMENT

IN THE MATTER OF
AMERICAN AGGREGATE, LLC.,

No. AQCA 10 - 43 (CO)

Respondent.

SETTLEMENT AGREEMENT AND STIPULATED FINAL ORDER

Pursuant to 20.1.5.600.B(2) NMAC, the New Mexico Environment Department ("Department") and American Aggregate LLC ("American Aggregate") agree to resolve Administrative Compliance Order No. AQCA 10-43(CO) on the terms and conditions specified in this Settlement Agreement and Stipulated Final Order ("Final Order"). For purposes of this Final Order, American Aggregate admits the jurisdictional allegations of this Final Order and consents to the relief specified herein.

I. BACKGROUND OF DISPUTE

A. PARTIES

1) The Secretary of the Department delegated to the Director of the Environmental Protection Division ("Division") the authority to seek administrative enforcement, including injunctive relief and civil penalties, for violations of the Air Quality Control Act ("AQCA"), NMSA 1978, §§ 74-2-1 to -17, and the Air Quality Control Regulations, 20.2 NMAC ("Regulations"). The Air Quality Bureau ("Bureau") is the organizational unit of the Division responsible for identifying and resolving air quality enforcement issues.

2) American Aggregate is a domestic New Mexico Limited Liability Company that operates a sand, gravel, and limestone crushing and screening facility ("Facility") located approximately 17 miles south of Roswell in Chaves County, New Mexico, known as Felix Pit #2.

B. ALLEGED VIOLATIONS

- 3) As a result of an inspection of the Facility November 3 and 4, 2009, the Bureau identified the following alleged violations:
- a) failure to maintain a Restricted Area in violation of Permit Section III.C.
 - b) failure to retain records of monthly opacity readings for 36 units for 5 months resulting in up to 180 instances of violation of Permit Sections IV.A.1 and IV.B.2.
 - c) failure to maintain records of daily inspections of water sprays resulting in up to 35 instances of violation of Permit Sections IV.A.2 and IV.B.2.
 - d) failure to keep and maintain records of the frequency of application of water or surfactant to the facility haul roads for the 35 days of operation from June 9, 2009 through October 20, 2009 resulting in up to 35 instances of violation of Permit Sections IV.B.2 and IV.B.3.
 - e) failure to produce copies of the manufacturer's (or applicant's proposed) maintenance requirements and records demonstrating compliance with said requirements, in violation of Permit Sections IV.B.2 and IV.B.3.
 - f) failure to conduct initial compliance test as required resulting in up to 36 instances of violation of Permit Section IV.D.9.
- 4) On November 2, 2010, the Bureau issued Compliance Order No. AQCA 10-43 to American Aggregate setting forth the above alleged violations, in greater detail.

II. COMPROMISE AND SETTLEMENT

- 5) The parties have engaged in settlement discussions to resolve the Compliance Order without further proceedings.
- 6) The parties agree to this Stipulated Final Order for the sole purpose of settling the

Compliance Order referenced above.

- 7) American Aggregate denies the violations alleged in the Compliance Order and does not admit any liability, fact, or legal conclusion by agreeing to this Final Order.
- 8) American Aggregate agrees to pay a civil penalty of \$15,000.
- 9) American Aggregate shall pay the civil penalty amount in twenty-four (24) monthly installments of \$625.00 by corporate or certified check payable to the State of New Mexico, beginning, no later than 30 days after the effective date of the Final Order. The payment shall be sent to:

Manager, Enforcement Section
Air Quality Bureau
1301 Siler Road, Building B
New Mexico Environment Department
Santa Fe, New Mexico 87507

- 10) If American Aggregate fails to pay the civil penalty as specified by Paragraph 9, American Aggregate shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, § 56-8-4 (1993).
- 11) If American Aggregate fails to make monthly payments for any two consecutive months, the Department may revoke permit number GCP-2-3879. Revocation will be accomplished by providing American Aggregate by written notice, by certified mail, and will be effective upon the date of the post mark.
- 12) Within 60 days of the compliance date of this permit, American Aggregate shall perform initial compliance tests on each crusher, screen, hopper, and conveyor transfer point pursuant to Permit Section IV.D.9, and shall submit the results to the department within 45 days of such tests as required by Permit Section IV.D.10. If American Aggregate fails to conduct the initial compliance tests, the Department may revoke permit number GCP-2-3879. Revocation will be

accomplished by providing American Aggregate by written notice, by certified mail, and will be effective upon the date of the post mark.

13) American Aggregate shall make any improvements to fences, berms or other features as necessary to limit public access to the restricted area.

III. OTHER TERMS AND CONDITIONS

14) Enforcement. The Department retains the right to pursue any relief authorized by the AQCA for any violation not addressed herein. The Department retains the right to enforce the Final Order by administrative or judicial action, which decision shall be in its sole discretion. In the event that the Department elects to file a judicial action to enforce the Final Order, the parties agree that the action shall be heard by the district court for Santa Fe County, which shall have exclusive jurisdiction over the parties and the Final Order, and they waive any right to challenge such jurisdiction in any forum. The laws of New Mexico shall govern the construction and interpretation of the Final Order.

15) Binding Effect. The Final Order shall be binding on the parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

16) Duration. The Final Order shall remain in effect until American Aggregate complies with its terms and conditions or it is terminated by written agreement of the parties.

17) Integration. The Final Order merges all prior written and oral communications between the parties concerning the subject matter of the Final Order, and contains the entire agreement between the parties. The Final Order shall not be modified without the express written consent of the parties.

18) Reservation of Rights and Defenses. The Final Order shall not be construed to prohibit or limit in any way the Department from requiring American Aggregate to comply with any applicable state or federal requirement. The Final Order shall not be construed to prohibit or

limit in any way the Department from seeking any relief authorized by the AQCA for violation of any state or federal requirement applicable to American Aggregate not resolved herein. The Final Order shall not be construed to prohibit or limit in any way American Aggregate from raising any defense to a Department action seeking such relief.

19) Mutual Release. The parties mutually release each other from all claims that each party raised or could have raised against the other regarding the facts and legal conclusions alleged above.

20) Authority to Bind. The person executing this Final Order on behalf of American Aggregate represents that he has the authority to execute this Final Agreement on behalf of American Aggregate.

21) Disclosure to Successors-in-Interest. American Aggregate shall disclose the Final Order to any successor-in-interest and shall advise such successor-in-interest that the Final Order is binding on the successor-in-interest until such time as American Aggregate complies with its terms and conditions or it is terminated by written agreement of the parties.

22) Effective Date. The Final Order shall become effective upon execution by the Secretary of the Department.

ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT

Mary Rose
Mary Rose
Director

3/29/12
Date

AMERICAN AGGREGATE LLC

Oliver Boykin

3-21-12
Date

ORDER

Fursuant to Section 20.1.5.600.B(2) NMAC, this Final Order is hereby APPROVED and

ORDERED.

David Martin
David Martin
Secretary/
New Mexico Environment Department

3-23-12
Date

TRANSMISSION VERIFICATION REPORT

TIME : 03/30/2012 12:50
NAME : NMED OFC OF GEN CNSL
FAX : 15058271628
TEL : 15058272990
SER.# : BROK0J218263

DATE, TIME	03/30 12:48
FAX NO./NAME	915755781279
DURATION	00:02:09
PAGE(S)	07
RESULT	OK
MODE	STANDARD



SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

Office of General Counsel

Harold Runnels Building
1190 Saint Francis Drive (87505)
PO Box 5469, Santa Fe, NM 87502-5469
Phone (505) 827-2990 Fax (505) 827-1628

www.nmenv.state.nm.us
Ryan Flynn, General Counsel



DAVE MARTIN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

Date: March 30, 2012
To: Mr. Olan Booher
FAX: 575-578-1279
Pages: 7
From: Laurie Leibowitz for Bill Grantham
Fax: 505-827-1628 Phone: 505-827-1612
Re: AQCA 10-43 (CO)

Comments:

Please see the attached "Settlement Agreement and Stipulated Final Order" signed by all parties – a hard copy is in the mail to you. Please contact Bill Grantham with any questions.

Thank you.