

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

In the Matter of:)

G. Lopes Construction, Inc.)
184R Broadway)
Raynham, MA 02767)

Proceeding under Section 113)
of the Clean Air Act)
_____)

**ADMINISTRATIVE ORDER
ON CONSENT**

STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency, Region 1 (“EPA”) issues this Administrative Order on Consent (“Order”) to G. Lopes Construction, Inc. (“G. Lopes”), to require it to comply with the Clean Air Act (“CAA”) and implementing regulations set forth under the New Source Performance Standards for Nonmetallic Mineral Processing Plants, promulgated at 40 C.F.R. Part 60, Subpart OOO (“Subpart OOO”).

2. EPA issues this Order pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

3. This Order, to which G. Lopes has consented and signed, requires G. Lopes to comply with the requirements of the CAA and Subpart OOO.

STATUTORY AND REGULATORY AUTHORITY

4. Pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, which requires EPA to establish standards of performance for new stationary sources (“NSPS”), EPA 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.

5. NSPS Subpart OOO, promulgated in 2009, 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 CAA. See 40 C.F.R. §§ 60.1–60.19.

6. Subpart OOO applies to “affected facilities” in fixed or portable nonmetallic mineral processing plants that commence construction, modification, or reconstruction after August 31, 1983, specifically each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station. 40 C.F.R. § 60.670. Subpart OOO includes emission limits for particulate matter, emission monitoring and inspection standards, performance test requirements, and reporting and recordkeeping requirements. 40 C.F.R. §§ 60.672, 60.674, 60.675, and 60.676.

7. Sections 113(a)(3) and (4) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (4), authorize EPA to issue an order requiring compliance with the requirements or prohibitions of Subchapter I of the CAA (which includes, among other things, the requirements of Section 111, 42 U.S.C. § 7411). EPA must send a copy of the order to the relevant state air pollution control agency. An order relating to a violation of Section 111 of the CAA, 42 U.S.C. § 7411, can take effect after the recipient has had the opportunity to confer with the Administrator concerning the alleged violation.

8. The Massachusetts Department of Environmental Protection has not taken delegation of Subpart 000 for non-Title V operating permitted sources. Thus EPA remains the authority for the implementation of Subpart 000 for these sources in Massachusetts. *See U.S. EPA, Massachusetts Delegation of New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAPs)* (September 27, 2024), <https://www.epa.gov/caa-permitting/massachusetts-delegation-new-source-performance-standards-nsps-and-national>.

LEGAL AND FACTUAL BACKGROUND

9. G. Lopes is the owner and operator of a stone crushing and gravel processing facility located at 184R Broadway in Raynham, Massachusetts (the “Facility”).

10. G. Lopes purchased the Facility during or around 2000.

11. G. Lopes is a domestic for-profit corporation organized under the laws of Massachusetts, with its principal office located in Taunton, Massachusetts.

12. As a domestic for-profit corporation, G. Lopes is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), against whom a compliance order may be issued under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

13. EPA conducted an on-site inspection of the Facility on April 25, 2024.

14. G. Lopes operates two fixed nonmetallic mineral processing plants at the Facility:

- a. The “Main Stone Plant,” consists of a set of crushing jaws, a main cone and screen deck, an overflow short head cone, a single wash wet deck, and a

conveyor system that includes three screws and a series of decks and conveyor belts that separate out sand, 1-½, ¾ and 3/8-inch aggregates; and

- b. The “Recycle Plant,” consists of a set of crushing jaws, magnets to remove metal, a cone and screener system, and a Torr conveyor system.

15. Both the Main Stone Plant and the Recycle Plant meet the definition for fixed nonmetallic mineral processing plants. See 40 C.F.R. § 60.671.

16. The provisions of Subpart OOO do not apply to fixed nonmetallic mineral processing plants with a capacity of 25 tons per hour or less. See 40 C.F.R. § 60.670(c)(1).

17. The provisions of the Subpart OOO apply to nonmetallic mineral processing plants that commenced construction, modification, reconstruction after August 31, 1983. See 40 C.F.R. § 60.670(e).

18. The Main Stone Plant and the Recycle Plant each have a capacity of greater than 25 tons per hour and, based in information supplied during the inspection, G. Lopes commenced construction of the plants sometime prior to 2004, but after August 31, 1983.

19. Each of the sets of crushing jaws, cone and screen systems, and conveyor systems included in both the Main Stone Plant and the Recycle Plant are “affected facilities” and subject to the provisions of Subpart OOO.

20. The Main Stone Plant and the Recycle Plant do not include capture systems used to capture and transport particulate matter generated by the crusher to a control device. See 40 C.F.R. § 60.671.

21. On August 21, 2024, EPA issued G. Lopes a Notice of Violation (“NOV”) of Subpart 000.

22. The NOV described G. Lopes’s failure to provide a notification of the actual date of initial startup of its stone crushing and gravel processing equipment associated with the Main Stone Plant or the Recycle Plant, in violation of 40 C.F.R. § 60.676(i).

23. The NOV also described G. Lopes’s failure to conduct the required EPA Reference Method 9 visible emissions testing on all subject equipment associated with the Main Stone Plant and the Recycle Plant no later than 180 days after initial startup, in violation of 40 C.F.R. §§ 60.672(b) and 60.675(c).

24. On September 25, 2024, G. Lopes and EPA met to discuss the NOV and G. Lopes’ plans to achieve compliance.

25. G. Lopes provided a Method 9 Performance Test Plan for EPA’s review on November 27, 2024.

26. EPA provided comments on the Performance Test Plan on December 5, 2024.

27. G. Lopes submitted a revised Performance Test Plan on December 6, 2024.

28. EPA provided comments on the revised Performance Test Plan on December 6, 2024.

29. G. Lopes has not submitted a final Method 9 testing plan to EPA nor given 30-day notice of when it intends to conduct the testing.

ADMINISTRATIVE ORDER ON CONSENT

30. To correct the violations cited above, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413(a)(3), within six months of the Effective Date of this Order, G. Lopes shall:

- a. Come into compliance with the requirements of Subpart OOO, including 40 C.F.R. §§ 60.672(b), 60.675(c), and 60.676(i);
- b. Provide notice of such compliance and supporting documentation by email to Grace Perry, Environmental Engineer, EPA Region 1 Environmental Compliance and Assurance Division, at perry.grace@epa.gov.

31. EPA Region 1's Manager of the Air Compliance Section, Enforcement and Compliance Assurance Division, shall have the authority to extend the deadline in Paragraph 30 for good cause.

GENERAL PROVISIONS

32. EPA reserves its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to failure by G. Lopes to comply with any of the requirements in this Order. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under any other statutory, regulatory, or common law authority of the United States.

33. Any violation of the CAA requirements of this Order may result in a civil administrative or judicial action for an injunction or civil penalties per day per violation, or both, as provided in Sections 113(b)(2) and 113(d)(1) of the CAA, 42 U.S.C. §§ 7413(b)(2) and

7413(d)(1), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C.

§ 7413(c). These penalties and sanctions are subject to inflation adjustments as specified in 40 C.F.R. Part 19.

34. EPA may use any information submitted under this Order in any subsequent administrative, civil judicial, or criminal action.

35. This Order does not resolve any civil or criminal claims of the United States for the violations alleged in this Order, nor does it limit the rights of the United States to obtain penalties or injunctive relief under the CAA or other applicable federal law or regulation. See CAA § 113(a)(4), 42 U.S.C. § 7413(a)(4). Nothing herein shall be construed to limit the power of EPA to undertake any action against G. Lopes or any person in response to conditions observed after the execution of this Order that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

36. This Order is not intended to be and shall not be construed to be a permit. Further, G. Lopes acknowledges and agrees that EPA's approval of this Order does not constitute a warranty or representation that requirements provided hereunder will meet the requirements of Subpart OOO. Nothing in this Order shall relieve G. Lopes of the duty to comply with all applicable provisions of the CAA, or other federal, state, or local laws or statutes.

37. G. Lopes has entered into this Order in good faith without any trial or adjudication of any issue of fact or law.

38. G. Lopes admits the jurisdictional allegations in this Order; neither admits nor denies specific factual allegations made in the Order; consents to compliance actions and conditions specified in the Order; and waives any rights to contest the allegations or to appeal this Order.

39. G. Lopes waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that G. Lopes may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

40. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive or other appropriate relief related the Facility, G. Lopes shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or the United States in the subsequent proceeding were or should have been raised in the present matter.

41. The provisions of this Order shall apply to and be binding upon G. Lopes and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns, and to all persons, firms, and corporations acting under, through or for G. Lopes. From the Effective Date of this Order until the Termination Date as set out below, G. Lopes must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously

with such notice, G. Lopes shall provide written notice to the EPA representative in Paragraph 30 of such transfer, assignment, or delegation.

42. Neither EPA nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by G. Lopes or its employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Order. Nor shall EPA or the United States be held as a party to any contract entered into by G. Lopes or by its employees, agents, contractors, or consultants.

43. All notices and submissions shall be considered effective upon receipt.

44. To the extent this Order requires G. Lopes to submit any information to EPA, G. Lopes may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If G. Lopes does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to G. Lopes.

45. Each party, G. Lopes and EPA, shall bear their own costs and fees in this action, including attorneys' fees.

SEVERABILITY

46. If any provision or authority of this Order or the application of this Order to G. Lopes or EPA is held by any judicial or administrative authority to be invalid, the remainder of the Order shall remain in force and shall not be affected thereby.

EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE

47. Pursuant to Section 113(a)(4) of the CAA, 42 U.S.C. § 7313(a)(4), an order does not take effect until the person to whom it has been issued has had an opportunity to confer with EPA concerning the alleged violations. By signing this Order, G. Lopes acknowledges and agrees that it has been provided an opportunity to confer with EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of G. Lopes or EPA.

48. Each undersigned representative certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally G. Lopes and EPA to this document.

49. G. Lopes and EPA agree that this Order may be executed by electronic signature, and acknowledge that electronic signatures carry the legal effect, validity, or enforceability of handwritten signatures. Each party also agree to electronic service of documents related to this Order.

MODIFICATION

50. This Order may only be modified by mutual agreement from G. Lopes and EPA. Any agreed-upon modifications shall be in writing, shall be signed by representatives for EPA and G. Lopes, shall have as their effective date the date on which they are signed by EPA, and shall be incorporated into this Order. Changes to scheduling in the Order may be approved by EPA

Region 1's Manager of the Air Compliance Section, Enforcement and Compliance Assurance Division.

TERMINATION

51. This Order shall terminate on the earlier of the following (the "Termination Date"), at which point G. Lopes shall operate in compliance with the CAA and Subpart OOO:

- a. One year after the Effective Date of this Order;
- b. The effective date of any determination by EPA that G. Lopes has achieved compliance with all terms of this Order; or
- c. Immediately upon receipt by G. Lopes of notice from EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

FOR G. LOPES CONSTRUCTION, INC.:



Gilbert J. Lopes, Jr., President
G. Lopes Construction, Inc.

Date

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 1:

**JAMES
CHOW**

Digitally signed by
JAMES CHOW
Date: 2025.04.25
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James Chow, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 1 – New England