

**CONCILIATION AGREEMENT
BETWEEN THE
U. S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
AND
AGGREGATE INDUSTRIES
7529 STANDISH PLACE, SUITE 200
ROCKVILLE, MD 20855**

PART I: General Provisions

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter OFCCP) and Aggregate Industries, 7529 Standish Place, Suite 200, Rockville, Maryland.
2. The violations identified in this Agreement were found during a compliance review of Aggregate Industries which began on July 18, 2011 and it was specified in a Notice of Violations issued February 29, 2012 and a Show Cause Notice issued September 9, 2011. OFCCP alleges that Aggregate Industries has violated Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) and the implementing regulations at 41 CFR Chapter 60 due to the specific violations cited in Part II below.
3. This Agreement does not constitute an admission by Aggregate Industries of any violation of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veteran's Readjustment Act of 1974, as amended (38 U.S.C. 4212) and implementing regulations.
4. The provisions of this Agreement will become part of Aggregate Industries' Affirmative Action Plan (AAP). Subject to the performance by Aggregate Industries of all promises and representations contained herein and in its AAP, all named violations in regard to the compliance of Aggregate Industries with all OFCCP programs will be deemed resolved. However, Aggregate Industries is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.
5. Aggregate Industries agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents, as may be relevant to the matter under investigation and pertinent to Aggregate Industries' compliance. Aggregate Industries shall permit access to its premises during normal business hours for these purposes.
6. Nothing herein is intended to relieve Aggregate Industries from the obligation to comply with the requirements of Executive Order 11246, as amended, and/or Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212, formerly 2012), and implementing

regulations, or any other equal employment statute or executive order or its implementing regulations.

7. Aggregate Industries agrees that there will be no retaliation of any kind against any beneficiary of this Agreement or against any person who has provided information or assistance, or who files a complaint, or who participates in any manner in any proceedings under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212).
8. This Agreement will be deemed to have been accepted by the Government on the date of signature by the District Director for OFCCP, unless the Regional Director or the Director, OFCCP indicates otherwise within 45 days of the District Director's signature of this Agreement.
9. If at any time in the future, OFCCP believes that Aggregate Industries has violated any portion of this Agreement during the term of this Agreement; Aggregate Industries will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Aggregate Industries with 15 days from receipt of the notification to respond in writing, except where OFCCP alleges that such a delay would result in irreparable injury.

Enforcement proceedings for violation of this Agreement may be initiated at any time after the 15-day period has elapsed (or sooner, if irreparable injury is alleged) without issuing a Show Cause Notice.

Where OFCCP believes that Aggregate Industries has violated this Conciliation Agreement, OFCCP may seek enforcement of this Agreement itself and shall not be required to present proof of the underlying violations resolved by this Agreement.

Liability for violation of this Agreement may subject Aggregate Industries to sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-300.65 and/or 41 CFR 60-741.65, and/or other appropriate relief.

PART II: Specific Provisions

1. **VIOLATION:** For the AAP review period July 1, 2010 through June 30, 2011, Aggregate Industries failed to submit Affirmative Action Program(s) (AAPs) and supporting documents in accordance with the requirements at 41 CFR 60-1.20(e), 60-741.40 (d) and 60-300.40 (d). Consequently, on September 9, 2011 a Notice to Show Cause was issued to Aggregate Industries for failure to submit Affirmative Action Programs meeting the requirements of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S. C. 4212).

REMEDY: On October 14, 2011, in response to the Show Cause Notice, Aggregate Industries submitted three acceptable Affirmative Action Programs meeting the requirements of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1974, as amended and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212).

2. **ALLEGED VIOLATION:** Aggregate Industries paid black employees at rates that were significantly less than those for comparable white employees within the same job title which therefore adversely impacted black employees on the basis of their race with regard to their compensation. Specifically, Aggregate Industries paid two black employees with the job title (b) (7)(C) significantly less than similarly situated white employees in the same job title in violation of 41 CFR 60-1.4(a)(1).

REMEDY: Aggregate Industries will implement the following remedial action:

- a. Within fifteen (15) days of the effective date of this Agreement, Aggregate Industries will send via Certified Mail Return Receipt Requested or other form indicating proof of delivery to the (b) (7)(C) black former employees, (listed in Attachment A at numbers (1). & (2).), the letter referred to in Attachment B entitled "Notice to Class Members" along with the two forms enclosed therewith, Attachment D "Address and Social Security Verification Form" and Attachment C "Release of Claims Under Executive Order 11246" ("Forms"). To be eligible for a distribution of back pay, the (b) (7)(C) black former employees must complete and return both Forms to Aggregate Industries so that they are postmarked within thirty (30) days of the postmark date of the "Notice to Class Members," form sent to the (b) (7)(C) black former employees.
- b. **Back Pay:** Back pay and interest will be provided to the (b) (7)(C) black former employees. Within sixty (60) days of the effective date of this Agreement, Aggregate Industries will mail a back pay check, less deductions required by law, to the (b) (7)(C) black former employees, if they complete and return the "Address and Social Security Verification Form" and "Release of Claims Under Executive Order 11246" Form within 30 days of the postmark date of the "Notice to Class Members" in the amount of \$15,916 to the former (b) (7)(C) listed at number (1) on Attachment A, and \$6,624 to the former (b) (7)(C) listed at number (2) on Attachment A.
- c. Within sixty (60) days of the effective date of this Agreement, Aggregate Industries will provide OFCCP-Pittsburgh District Office, via electronic mail ("e-mail"), a list of the names of Class Members who did not return the Forms within the 30-day period and a copy of the proof of mailing receipt for each such Class Member.

OFCCP will have thirty (30) days from its receipt of such list to verify the current addresses for such Class Members who did not return the Forms within the time

provided. At or before the end of such 30-day period, OFCCP will send to Aggregate Industries, via e-mail, a list of the names and current addresses of such Class Members whose current addresses OFCCP was able to verify. For purposes of this Paragraph 2(C) the Aggregate Industries mail contact will be Monica Simpkins, Human Resources Manager, (monica.simpkins@aggregate-us.com) and the OFCCP e-mail contact will be Tracie Brown, District Director (brown.tracie@dol.gov).

Within ten (10) days of its receipt of OFCCP's list, Aggregate Industries will send (by Certified Mail/Return Receipt Requested) a second Notice and a second set of Forms to each Class Member on the list whose current address OFCCP verified. To be eligible for a back-pay distribution, each such Class Member must complete, sign and return the Forms to Aggregate Industries so that they are postmarked within thirty (30) days of the date the Class Member received the Forms from Aggregate Industries, as evidenced by the return receipt from the second mailing. Subsequently, back-pay checks will be distributed to those Class Members who respond to the second mailing within fifteen (15) days of receipt of their completed Forms.

Any Class Member that has not returned the completed and signed Forms within thirty (30) days of the Class Member's receipt of the second Notice from the second mailing will no longer be entitled to their share of the monetary settlement which will be redistributed proportionately to the class members who did respond to either the first or second Notice.

3. **ALLEGED VIOLATION:** Aggregate Industries paid black employees at rates that were significantly less than those for white employees in a job title classified at a lower level than the job title held by the black employees which therefore adversely impacted black employees on the basis of their race with regard to their compensation. Specifically, Aggregate Industries paid two black employees with the job title [REDACTED] significantly less than white employees in the lower classified job title [REDACTED] in violation of 41 CFR 60-1.4(a). (b) (7)(C)

REMEDY: Aggregate Industries will implement the following remedial action:

- a. Within fifteen (15) days of the effective date of this Agreement, Aggregate Industries will send via Certified Mail/Return Receipt Requested or other form indicating proof of delivery to the [REDACTED] black former employees (listed in Attachment A at numbers (3) & (4).) the letter referred to in Attachment B entitled "Notice to Class Members" along with the two forms enclosed therewith, Attachment D "Address and Social Security Verification Form" and Attachment C "Release of Claims Under Executive Order 11246" Form. To be eligible for a distribution of back pay, the [REDACTED] black former employees must complete and return both Forms to Aggregate Industries so that they are postmarked within 30 days of the postmark date of the "Notice to Class Members," form sent to the black former employees.

- b. **Back Pay:** Back pay and interest will be provided to the (b) (7)(C) black former employees. Within sixty (60) days of the effective date of this Agreement, Aggregate Industries will mail a back pay check, less deductions required by law, to the (b) (7)(C) black former employees, if they complete and return the "Address and Social Security Verification Form" and "Release of Claims Under Executive Order 11246" Form within thirty (30) days of the postmark date of the "Notice to Class Members" in the amount of: \$11,086 to the former (b) (7)(C) listed at number (3) on Attachment A, and \$12,374 to the former (b) (7)(C) listed at number (4) on Attachment A.
- c. Within sixty (60) days of the effective date of this Agreement, Aggregate Industries will provide OFCCP-Pittsburgh District Office, via electronic mail ("e-mail"), a list of the names of Class Members who did not return the Forms within the 30-day period and a copy of the proof of mailing receipt for each such Class Member.

OFCCP will have thirty (30) days from its receipt of such list to verify the current addresses for such Class Members who did not return the Forms within the time provided. At or before the end of such 30-day period, OFCCP will send to Aggregate Industries, via e-mail, a list of the names and current addresses of such Class Members whose current addresses OFCCP was able to verify. For purposes of this Paragraph 3(C) the Aggregate Industries mail contact will be Monica Simpkins, Human Resources Manager, (monica.simpkins@aggregate-us.com) and the OFCCP e-mail contact will be Tracie Brown, District Director (brown.tracie@dol.gov).

Within ten (10) days of its receipt of OFCCP's list, Aggregate Industries will send (by Certified Mail/Return Receipt Requested) a second Notice and a second set of Forms to each Class Member on the list whose current address OFCCP verified. To be eligible for a back-pay distribution, each such Class Member must complete, sign and return the Forms to Aggregate Industries so that they are postmarked within thirty (30) days of the date the Class Member received the Forms from Aggregate Industries, as evidenced by the return receipt from the second mailing. Subsequently, back-pay checks will be distributed to those Class Members who respond to the second mailing within fifteen (15) days of receipt of their completed Forms.

Any Class Member that has not returned the completed and signed Forms within thirty (30) days of the Class Member's receipt of the second Notice from the second mailing will no longer be entitled to their share of the monetary settlement which will be redistributed proportionately to the class members who did respond to either the first or second Notice.

PART III: Reporting

In order for OFCCP to monitor Aggregate Industries' progress toward fulfilling the provisions of this Agreement, Aggregate Industries agrees to submit two Reports to the OFCCP's Pittsburgh District Office. The date of signature by OFCCP's District Director shall constitute the effective date of this Agreement.

The first Report shall be due within sixty (60) days of the effective date of this Agreement and include the following:

- Copies of the completed Forms C and D received from the black former employees (see Paragraph (a) of Remedies Two and Three in Part II of this Agreement).
- The list of the names of the former black employees listed in Attachment A who did not return Forms C and D within the 30-day time frame, along with a copy of the proof of mailing receipt of Forms C and D for each such former black employee.

The second Report shall be due within ninety (90) days of the effective date of this Agreement and include the following:

- Copies of the back pay checks issued to each of the former black employees listed in Attachment A, as outlined in Paragraph (b) of Remedies Two and Three in Part II of this Agreement.
- Documentation to demonstrate the back pay checks were received by each of the former black employees listed in Attachment A.

The third Report shall be due within one-hundred and thirty (130) days of the effective date of this Agreement. It will only be applicable in the event that any of the four former black employees listed on Attachment A did not complete and return Forms C and D within the 30-day time period of the first mailing as described above. It shall include the following:

- For those former black employees listed on Attachment A who did not respond to the first mailing of Forms, the completed Forms C and D in response to the second mailing as described in paragraphs (c) of Remedies Two and Three in Section II of this Agreement; along with copies of the back-pay checks issued to each such former black employee.
- For those former black employees listed on Attachment A who did not respond to the first mailing of Forms, who also did not respond to the second mailing of forms, proof of mailing receipt of Forms C and D of the second mailing for each such former black employee.

- In the event that any of the former black employees listed on Attachment A did not return completed Forms C and D in response to either of the two mailings described above, documentation of the proportional redistribution of back-pay (i.e., copies of back-pay checks) to the former black employees listed on Attachment A who did complete and return Forms C and D within the required time-frames.

Aggregate Industries will provide a written explanation and supporting documentation if any of the documentation listed above is missing from the report.

Aggregate Industries will retain all records pertinent to the violations settled by this Conciliation Agreement and the Report submitted under it (including the underlying data/information upon which the reports are based) until the expiration date of this Conciliation Agreement or consistent with regulatory timeframes, whichever is later.

Aggregate Industries shall send the Progress Report to:

Tracie Brown
District Director
U.S. Department of Labor
Office of Federal Contract Compliance Programs
Pittsburgh District Office
Room 2103 Federal Building
1000 Liberty Avenue
Pittsburgh, PA 15222

Expiration Date:

This Conciliation Agreement will expire ninety (90) days after receipt of the second progress report, unless OFCCP determined Aggregate Industries failed to demonstrate each of the Remedies listed in Part II of this Conciliation Agreement were fully implemented as required, therefore this Conciliation Agreement shall remain in full force and effect until OFCCP has determined that Aggregate Industries has met all conditions of this Agreement.

PART IV: Signatures

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Aggregate Industries, 7529 Standish Place, Suite 200, Rockville, Maryland.

(b) (7) (c)

BERNARD TERVER
CEO
Aggregate Industries
Rockville, MD

3/14/12
DATE

(b) (7) (e)

Compliance Officer
U.S. Department of Labor/OFCCP
Pittsburgh District Office

3-20-12
DATE

(b) (7) (c)

NATALIE ALLEN
Assistant District Director
U.S. Department of Labor/OFCCP
Pittsburgh District Office

3-20-12
DATE

(b) (7) (c)

PRACIE BROWN
District Director
U.S. Department of Labor/OFCCP
Pittsburgh District Office

3/23/2012
DATE

ATTACHMENT A

LIST OF CLASS MEMBERS

- (1) (b) (7) (c) 
- (2)
- (3)
- (4)

ATTACHMENT B

NOTICE TO CLASS MEMBERS

Aggregate Industries and the U. S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) have entered into a Conciliation Agreement (CA) to resolve alleged disparities in the compensation practices for the (b) (7)(C) and (b) (7)(C) job titles during the period from July 2009 through December 2011. You have been identified as an individual who worked as a (b) (7)(C) or (b) (7)(C) but who was paid at a rate lower than a similarly situated or lower situated non-minority.

As part of this CA, you are eligible to receive a distribution of back pay subject to lawful payroll deductions. **In order to be eligible for this distribution, you must execute the enclosed Address and Social Security Verification, and the Release of Claims Forms and return them within thirty (30) days of this letter's postmark to:**

Ms. Monica Simpkins
Human Resources Manager
Aggregate Industries
7529 Standish Place, Suite 200
Rockville, MD 20855

By entering into this CA, Aggregate Industries has not admitted, nor has there been any adjudicated finding that Aggregate Industries violated any laws. Aggregate Industries has entered into this CA for its convenience and to resolve the matter without further legal proceeding.

If you have any questions, you may call _____ at _____ or Tracie Brown, District Director, OFCCP – Pittsburgh District Office, at 412-395-4323. Your call will be returned as soon as possible.

Sincerely,

Monica Simpkins
Human Resources Manager

ATTACHMENT C

RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

In consideration of the payment of back pay and interest (less deductions required by law) to be made by Aggregate Industries to me, and also in consideration of the Conciliation Agreement between Aggregate Industries and the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), I agree to the following:

I.

I hereby waive, release, and forever discharge Aggregate Industries, its predecessors, related entities, subsidiaries, and organizations, and its and their directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate in any way to being compensated as a (b) (7)(C) or (b) (7)(C) at a rate lower than a similarly situated or lower situated non-minority from July 2009 to December 2011.

II.

I understand that if I am concerned about how the process described in this Release applies to me, I may contact OFCCP for assistance at (412) 395-4323.

III.

I understand that Aggregate Industries denies that it treated me unlawfully or unfairly in any way, and that Aggregate Industries entered into the above-referenced Conciliation Agreement with OFCCP in the spirit of conciliation and to bring closure to the Compliance Review initiated by OFCCP on July 18, 2011. I further agree that the payment of the aforesaid sum by Aggregate Industries to me is not to be construed as an admission of any liability by Aggregate Industries.

IV.

I understand that this Release is a legal document, and I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms, and to consult with my advisors. I further declare that I have decided of my own free will to sign this Release.

V.

I understand that if I do not sign this Release and return it to Aggregate Industries within thirty (30) days of the post-marked date of the Notice to Class Members sent to me, I will not be entitled to receive any share of back pay (less deductions required by law) from Aggregate Industries.

IN WITNESS WHEREOF, I have set my hand to this _____ day of _____ 201__.

Signature

ATTACHMENT D

Address and Social Security Verification

You must complete this form in order to be eligible for the monetary settlement under the terms of the Conciliation Agreement (CA) between Aggregate Industries and the U. S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) dated _____. Please print legibly, except for the signature.

Name: _____

- () I confirm that the address on the cover letter is correct.
- () The Address on the cover letter is not correct. My correct address is:

Address: _____

Notify Aggregate Industries at the address below if your address changes within the next twelve months.

Your Social Security Number is required for tax purposes. Please list in the space below:

_____ - _____ - _____

You must return this form within thirty (30) days of your receipt of this letter to:

Aggregate Industries
7529 Standish Place, Suite 200
Rockville, MD 20855

"I certify the above as true and correct."

Signature

Date