

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:

Asbestos and Mold Services, Inc.
3859 Sylon Boulevard
Hainesport, New Jersey 08036

Respondent,

Valley Forge Christian College
1401 Charleston Road
Phoenixville, Pennsylvania 19460

Facility.

DOCKET NO. CAA-03-2008-0133

PROCEEDING UNDER:

Section 113(d) of the Clean Air Act,
42 U.S.C. § 7413(d).

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REGIONAL OFFICE
PHILADELPHIA
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CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III (“EPA” or “the Agency”), and Asbestos and Mold Services (“AMS” or the “Respondent”), pursuant to Section 113(d) of the Clean Air Act (“CAA” or the “Act”), as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R Part 22, with specific reference to the Consolidated Rules set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3). This Consent Agreement and the accompanying Final Order (collectively referred to herein as the “CAFO”) address violations by Respondent of section 112 of the Act and the federal regulations implementing the National Emission Standards for Hazardous Air Pollutants

for asbestos (“Asbestos NESHAP”), as set forth at 40 C.F.R. Part 61, Subpart M¹.

II. GENERAL PROVISIONS

2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
3. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this Consent Agreement, except as provided in Paragraph 2, above.
4. Respondent agrees not to contest EPA’s jurisdiction with respect to the execution and enforcement of this Consent Agreement or the issuance of the accompanying Final Order.
5. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
6. Respondent consents to the issuance of the CAFO and agrees to comply with the terms of the CAFO.
7. Respondent shall bear its own costs and attorney’s fees.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. Complainant has determined that Respondent has violated a requirement of the Act and the federal regulations implementing the Asbestos NESHAP set forth at 40 C.F.R. Part 61, Subpart M. In accordance with the (“Consolidated Rules”), 40 C.F.R Part 22, with specific reference to the Consolidated Rules set forth at 40 C.F.R. §§ 22.13(b) and

¹ The Asbestos NESHAP was promulgated under Section 112 as it existed prior to the amendment of the Clean Air Act in November 1990, but continues to be valid and enforceable pursuant to Section 112(q) of the amended Clean Air Act, 42 U.S.C. § 7412(q).

22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law.

9. The Respondent is a "person" as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).
10. Pursuant to 40 C.F.R. § 61.141 "asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.
11. Pursuant to 40 C.F.R. § 61.141 "facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building.
12. Pursuant to 40 C.F.R. § 61.141 "owner or operator of a demolition or renovation activity" means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.
13. Pursuant to 40 C.F.R. § 61.141, "regulated asbestos-containing material ("RACM")" means, in pertinent part, friable asbestos material or Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.
14. Pursuant to 40 C.F.R. § 61.141 "renovation" means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component.

15. The Valley Forge Christian College owns, among other things, a 12,000 square foot building, (the "Facility"), located at 1401 Charleston Road, Phoenixville, PA 19460, used as a dormitory for students attending the college.
16. AMS is a company specializing in asbestos abatement, demolition, insulation and mold remediation services, with a business address of 3859 Sylon Boulevard, Hainesport, New Jersey 08036.
17. At the time of the violation alleged in this Consent Agreement, including the renovation conducted at the Facility in April and May of 2007, Respondent was the "operator" of a renovation activity as that term is defined by 40 C.F.R. § 61.141.
18. On April 1, 2007, EPA received an Asbestos Abatement and Demolition/Renovation Notification Form (the "Notification"), regarding a renovation project at the Facility from Mid-Atlantic Dismantlement, Inc., ("Mid-Atlantic"), the demolition contractor.
19. The Notification sent by Mid-Atlantic did not comply with the asbestos demolition notification requirements of 40 C.F.R. § 61.145(b), because it did not have complete information regarding the asbestos removal project which involved the removal of 1000 linear feet of friable RACM located on pipes on the first floor and in the crawlspace of the facility.
20. The April 1, 2007 Notification indicated that the Respondent ASM would be sending a separate notification showing the operation schedule for the asbestos abatement project.
21. On or about July 16, 2007, Mr. Richard Ponak, EPA's duly authorized representative, conducted a review of asbestos notifications sent to EPA during the Spring 2007 time frame.

22. During the review Mr. Ponak observed the April 1, 2007 Notification sent by the demolition contractor, but did not see a notification from Respondent.
23. On December 13, 2007, a copy of the asbestos abatement notification was sent by Respondent via facsimile.
24. EPA never received any asbestos notification from Respondent prior to December 13, 2007.

IV. VIOLATION

COUNT I

25. Complainant realleges the allegations contained in paragraph 1 through 24 above.
26. At the time of the violation alleged in this CAFO, Respondent “renovated” the Facility as that term is defined by 40 C.F.R. § 61.141.
27. 40 C.F.R. § 61.145(b) provides, in pertinent part, that each owner or operator of a demolition or renovation activity to which this section applies shall: (1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable. (2) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent. (3) Postmark or deliver the notice...(1) at least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material).
28. EPA never received written notification of Respondent’s intent to demolish the Facility before the demolition project was conducted at the Facility.

29. Respondent's failure to comply with the requirements of 40 C.F.R. § 61.145(b) constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

V. CIVIL PENALTY

30. In settlement of the above-captioned action, Respondents agree to pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00). The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, Section 113, 42 U.S.C. § 7413 penalty assessment criteria, including the seriousness of Respondents' violations and Respondents' good faith efforts to comply as provided in the Clean Air Act Stationary Source Civil Penalty Policy, Appendix III, and the Asbestos NESHAP, as set forth at 40 C.F.R. Part 61, Subpart M.
31. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this executed CAFO is mailed or hand-delivered to Respondent.
32. Payment of the civil penalty amount required under the terms of Paragraph 30, above, shall be made as follows:
- a. Mailing (*via regular U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251.

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

Mellon Client Service Center
ATTN: Shift Supervisor, Room 0690
Lockbox 371099M
500 Ross Street
Pittsburgh, PA 15262-0001.

c. Respondent's civil penalty payment also may be made by electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045

Field tag 4200 of Fedwire message should read "D 68010727 Environmental Protection Agency"

d. Respondent's civil penalty payment also may be made by automatic clearinghouse (ACH) to the following account:

PNC Bank
ABA 051036706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street NW
Washington, DC 20074

33. All payments made by check also shall reference the above case caption and docket number, CAA-03-2008-0133. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650

Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Kyla Townsend (3WC32), Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

34. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
35. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this executed CAFO is mailed or hand-delivered to Respondents. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
36. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
37. A penalty charge of six percent per year will be assessed monthly on any portion of the

civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

38. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

V. RESERVATION OF RIGHTS

This CAFO resolves only EPA's civil claims for the specific violation alleged in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

VI. PARTIES BOUND

This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the Respondent and the employees, contractors, successors and assigns of Respondents.

VII. EFFECTIVE DATE

The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk of U.S. EPA - Region III. By his or her signature below, the person signing this Consent Agreement on behalf of the

Respondent is acknowledging that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement.

For the Respondent:

Date 3/14/08

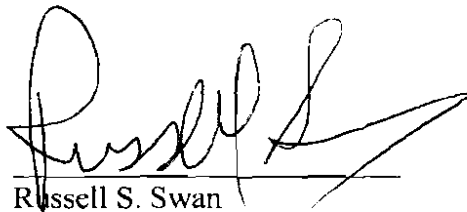


Kim Trumbetti
Asbestos and Mold Services

For the Complainant:

United States Environmental Protection Agency
Region III


Date: 3/21/09



Russell S. Swan
Assistant Regional Counsel

The Waste and Chemicals Management Division, United States Environmental Protection Agency - Region III, recommends that the Regional Administrator of U.S. EPA Region III or his designee issue the accompanying Final Order.

Date: 3/26/08


Abraham Ferdas, Director
Waste and Chemicals Management Division

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Hainesport, New Jersey 08036 : **PROCEEDING UNDER:**
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 : 42 U.S.C. § 7413(d).
 :
Valley Forge Christian College :
1401 Charleston Road :
Phoenixville, Pennsylvania 19460 :
 :
Facility. :

FINAL ORDER

Complainant and Respondents have executed a document entitled "Consent Agreement," which I ratify as a Final Order in accordance with Section 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. § 22.18(b)(3). The terms of the forgoing Consent Agreement are hereby accepted by the undersigned and incorporated into this Order.

NOW THEREFORE, pursuant to 40 C.F.R. § 22.18(b)(3), the undersigned ratifies the forgoing Consent Agreement and hereby orders that the Respondent Asbestos and Mold Services, shall be liable for a civil penalty of one thousand five hundred dollars (\$1,500.00). The effective date of the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S. EPA Region III.

Date: 2/31/08

Renée Sarajian
Renée Sarajian
Regional Judicial Officer

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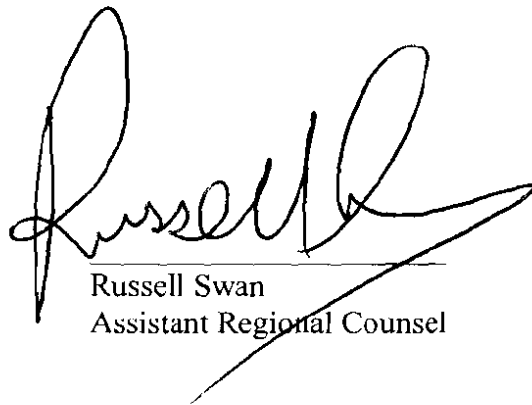
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order was hand-delivered to and filed with the Regional Hearing Clerk, EPA, Region III, and that a true and correct copy was mailed via overnight mail, to the following:

Kim Trumbetti
Asbestos & Mold Services
3859 Sylon Boulevard
Hainesport, NJ 08036

Date:

3/31/08



Russell Swan
Assistant Regional Counsel

