



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 08 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Don Barillari
Tristar of America, Inc.
2731 Simpson Circle, NW
Norcross, Georgia 30071

Re: Tristar of America, Inc.
Consent Agreement and Final Order
Docket No.: CAA-04-2011-1503(b)

Dear Mr. Barillari:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO, the initial payment of \$2,739.31 of the payment plan is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the respondent and the docket number of this case. Penalty payment questions should be directed to Mr. Bryson Lehman either by telephone at (513) 487-2123 or by written correspondence to his attention at U.S. Environmental Protection Agency, Cincinnati Accounting Operations at the address identified in the CAFO.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mr. Bates of the EPA Region 4 staff at (404) 562-8992.

Sincerely,

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Tristar of America, Inc.)
)
)
Respondent.)
_____)

Docket No. CAA-04-2011-1503(b)

2011 MAR 9 11 00 AM
EPA REGION 4
ATLANTA, GA

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 CFR Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, U. S. Environmental Protection Agency, Region 4. Respondent is Tristar of America, Inc.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this

authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A, last updated on August 4, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to the aforementioned delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. In December 1977, pursuant to Section 112(l) of the CAA, EPA delegated the Administrator's authorities and responsibilities to implement and enforce emission standards and prevention requirements for asbestos under Section 112 of the CAA, 42 U.S.C. § 7412, to the State of Georgia. Pursuant to Georgia Department of Natural Resources Rules for Air Quality Control, Chapter 391-3-1-.02(9)(b)(7), the State has incorporated and adopted EPA's rules for asbestos located at 40 C.F.R. Part 61, Subpart M, promulgated pursuant to Section 112 of the CAA, by reference. As indicated in Section 112(l)(7) of the CAA, nothing in Section 112(l) of the CAA shall prohibit the Administrator from enforcing any applicable emission standard or requirement under Section 112 of the CAA.
5. Asbestos is a "hazardous air pollutant" as that term is defined in Sections 112(a)(6) and 112(b)(1) of the CAA, 42 U.S.C. §§ 7412(a)(6) and 7412(b)(1), and is the subject of regulations codified at 40 C.F.R. Part 61, Subpart M, "National Emission Standard for Asbestos," promulgated pursuant to Section 112 of the CAA, 42 U.S.C. § 7412. Any person who violates Section 112 of the CAA may be assessed a penalty of up to \$25,000 for each such violation, in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d). The Debt Collection Improvement Act of 1996 requires EPA to review and

adjust penalties, as necessary, for inflation at least once every four years. As such, pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 CFR Part 19, the revised maximum penalty for each violation occurring after January 30, 1997, through March 15, 2004, is \$27,500, for each violation occurring after March 15, 2004, through January 12, 2009, the maximum penalty for each violation is \$32,500, and for each violation occurring after January 12, 2009, the maximum penalty for each violation is \$37,500. Each day a violation continues may constitute a separate violation.

6. Pursuant to 40 CFR § 22.5(c)(4), the following individual is authorized to receive service for EPA in this proceeding:

Keith Bates
Chemical Products and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-8992.

III. Specific Allegations

7. Respondent is a company registered in the State of Georgia with a principal office located at 2731 Simpson Circle NW in Norcross, Georgia.
8. Respondent is a "person" as defined in Section 302 of the CAA, 42 U.S.C. § 7602.
9. Respondent is an operator of a demolition activity.
10. An owner or operator of a demolition or renovation activity is defined at 40 CFR § 61.141 as 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.
11. Sometime after March 31, 2010, Respondent demolished facilities on behalf of Gwinnett County Georgia located at: 2001 Sunny Hill Road and 280 North Price Road in Duluth,

Georgia; 3387 Medlock Bridge Road and 5880 Goshen Springs Road in Norcross, Georgia; and 2407 Chattahoochee Road in Duluth, Georgia.

12. Demolition is defined in 40 C.F.R. § 61.141 as the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.
13. A facility is defined at 40 C.F.R. § 61.141, in part, as any institutional, commercial, public, industrial, or residential structure, installation, or building.
14. Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(a) by failing to inspect the facility for the presence of asbestos prior to the initiation of demolition activities.
15. Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(b) by failing to provide written notice of intention to demolish the facility prior to the initiation of demolition activities.

IV. Consent Agreement

16. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the allegations set forth above.
17. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
18. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
19. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M.

20. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
21. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

V. Final Order

22. Respondent is assessed a civil penalty of **TWENTY ONE THOUSAND, SIX HUNDRED SEVENTY DOLLARS (\$21,670)**. Eight payments will be made to complete payment of the entire civil penalty including interest. The first installment is due within 30 days of the effective date of this CAFO. The subsequent seven payments shall be due in 90 day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **TWENTY ONE THOUSAND, NINE HUNDRED FOURTEEN DOLLARS and FORTY-EIGHT CENTS (\$21,914.48)**. Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	within 30 days of filing of CAFO	\$ 2,739.31
2	within 120 days of filing of CAFO	\$ 2,739.31
3	within 210 days of filing of CAFO	\$ 2,739.31
4	within 300 days of filing of CAFO	\$ 2,739.31
5	within 390 days of filing of CAFO	\$ 2,739.31
6	within 480 days of filing of CAFO	\$ 2,739.31

7	within 570 days of filing of CAFO	\$ 2,739.31
8	within 660 days of filing of CAFO	\$ 2,739.31

23. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America." **The Respondent shall note on the face of the check the Respondent's name and the Docket Number associated with this CAFO.** The penalty payment shall be sent by one of the following methods to the address identified for the method chosen.

Address for payment submittal using the United States Postal Service:

U.S. Environmental Protection Agency
 Fines and Penalties
 Cincinnati Finance Center
 P.O. Box 979077
 St. Louis, Missouri 63197-9000.

Address for payment submittal using other mail service (e.g., Federal Express, United Parcel Service (UPS), DHL, etc.):

U.S. Bank
 1005 Convention Plaza
 Mail Station SL-MO-C2GL
 St. Louis, Missouri 63101.

Contact Person: Natalie Pearson (314) 418-4087

24. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
 U.S. EPA Region 4
 61 Forsyth Street, S.W.
 Atlanta, Georgia 30303-8960;

Keith Bates
Chemical Products and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960; and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960.

25. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not made within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) **and all accrued interest** shall become immediately due and payable on the 31st day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.
26. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
27. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of **TWENTY ONE THOUSAND, SIX HUNDRED SEVENTY DOLLARS (\$21,670)** within thirty (30) calendar days after the date on which a copy of this CAFO is mailed or

hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

28. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
29. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such 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). A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
31. This CAFO shall be binding upon the Respondent, its successors and assigns.

32. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

The remainder of this page is intentionally blank.

VI. Effective Date

33. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: Tristar of America, Inc.


Docket No.: CAA-04-2011-1503(b)

By:  Date: 2-15-11

Name: DONATO BARILLARI

Title: VICE PRES

Complainant: U.S. Environmental Protection Agency

By:  Date: 2/28/11

Beverly H. Banister
Director
U.S. EPA Region 4
Air, Pesticides and Toxics
Management Division
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 3rd day of March, 2011.

By: 
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

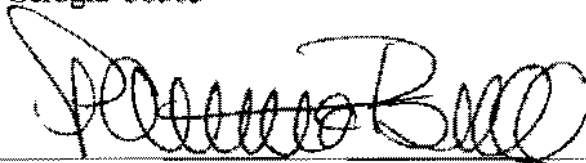
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Tristar of America, Inc., Docket Number: CAA-04-2011-1503(b), to the addressees listed below.

Mr. Don Barillari (via Certified Mail, Return Receipt Requested)
Tristar of America, Inc.
2731 Simpson Circle, NW
Norcross, Georgia 30071

Keith Bates (via EPA's internal mail)
Chemical Products and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Marlene Tucker (via EPA's internal mail)
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

By:



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303

Date:

3-8-11

(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 3/4/0 (Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504 (Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree USAO COLLECTS

Administrative Order/Consent Agreement FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree DOJ COLLECTS

Oversight Billing - Cost Package required: Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Tristar of America Inc. (Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 21,670 (If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 04 2011-1503(b)

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office:

The IFMS Accounts Receivable Control Number is: Date

If you have any questions, please call: of the Financial Management Section at:

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- 1. Debt Tracking Officer Environmental Enforcement Section Department of Justice RM 1647 P.O. Box 7611, Benjamin Franklin Station Washington, D.C. 20044
2. Originating Office (EAD)
3. Designated Program Office

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- 1. Originating Office
2. Regional Hearing Clerk
3. Designated Program Office
4. Regional Counsel (EAD)