



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

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

**AUG 23 2012**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Henry Shitrit  
Owner  
Ocean Yam, L.L.C.  
14418 Ocean Highway  
Pawley's Island, South Carolina 29585

Re: Ocean Yam, L.L.C.  
Consent Agreement and Final Order  
Docket No. CAA-04-2012-1518(b)

Dear Mr. Shitrit:

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.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

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 any environmental enforcement actions taken by the U. S. Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Mr. Mark Bean of the EPA Region 4 staff at (404) 562-9000.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle".

Jeaneanne M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION IV

2012 AUG 23 AM 11:45

HEARING CLERK

In the Matter of: )  
 )  
Ocean Yam, L.L.C. )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No.: CAA-04-2012-158(b)

**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 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region 4. Respondent is Ocean Yam L.L.C. ("Respondent"). The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of the EPA. The Administrator of the 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 of the 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 ("EPA" or "Complainant").

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 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 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

3. In December 1977, pursuant to Section 112(l) of the CAA, the 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 the 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.
4. Asbestos is a "hazardous air pollutant" as that term is defined in Section 112(a) of the CAA, 42 U.S.C. § 7412(a), 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.
5. A "person" is defined in Section 302 of the CAA, 42 U.S.C. § 7602 as an individual, corporation, partnership, association, State, municipality, political subdivision of a State

and any agency, department or instrumentality of the United States and any officer, agent or employee thereof.

6. A “facility” is defined in 40 C.F.R. § 61.141, in part, as any institutional, commercial, public, industrial or residential structure, installation or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site.
7. “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.
8. “Renovation” is defined in 40 C.F.R. § 61.141 as altering a facility or one or more facility components in any way, including the stripping or removal of regulated asbestos-containing material from a facility component.
9. An “owner or operator of a demolition or renovation activity” is defined in 40 C.F.R. § 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.
10. An “installation” is defined in 40 C.F.R. § 61.141 as any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).
11. Since EPA has delegated the Administrator’s authorities and responsibilities for asbestos under Section 112 of the CAA to the State of Georgia, owners or operators of demolition or renovation activity occurring in the State must notify the Georgia Department of

Natural Resources, Georgia Environmental Protection Division, Lead-based Paint and Asbestos Program of any such activity pursuant to 40 C.F.R. § 61.145(b).

12. 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 the EPA to review and adjust penalties, as necessary, for inflation at least once every four years. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, the current revised maximum penalty for each violation occurring after January 12, 2009, is \$37,500. Each day a violation continues may constitute a separate violation.
13. EPA determined Respondent's compliance through a review of a permit, an inspection and discussions with Respondent.

### **III. Specific Allegations**

14. Respondent is a corporation registered to operate in the State of Georgia. Therefore, Respondent is a "person" as defined in Section 302 of the CAA, 42 U.S.C. § 7602.
15. "Demolition" occurred between June 29, 2011, and September 30, 2011, at an "installation" consisting of properties located at 1965, 1967, 1969 and 1973 Glynn Avenue in Brunswick, Georgia (the Facility).
16. At the time of demolition, the Facility included two former gas stations and two former office buildings. Therefore, the Facility met the definition of a "facility" by being a commercial installation.
17. Respondent operated, controlled or supervised the demolition operation at the Facility. Therefore, Respondent is an "owner or operator of a renovation or demolition activity."

18. Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(b) by failing to provide the State of Georgia with written notice of intention to demolish the Facility.

#### **IV. Consent Agreement**

19. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
20. 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.
21. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
22. 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.
23. 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.
24. 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.

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

Pamela McIlvaine  
Chemical Products and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9197.

**V. Final Order**

26. Respondent is assessed a civil penalty of **FOUR THOUSAND SIX HUNDRED and TWENTY-SEVEN DOLLARS** (\$4,627.00). Twenty-four 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 twenty-three payments shall be due in 30 day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **FOUR THOUSAND SIX HUNDRED and SEVENTY-FIVE DOLLARS and THIRTY-FIVE CENTS** (\$4,675.35). 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	\$194.81
2	within 60 days of filing of CAFO	\$194.81
3	within 90 days of filing of CAFO	\$194.81
4	within 120 days of filing of CAFO	\$194.81
5	within 150 days of filing of CAFO	\$194.81
6	within 180 days of filing of CAFO	\$194.81
7	within 210 days of filing of CAFO	\$194.81
8	within 240 days of filing of CAFO	\$194.81
9	within 270 days of filing of CAFO	\$194.81
10	within 300 days of filing of CAFO	\$194.81
11	within 330 days of filing of CAFO	\$194.81
12	within 360 days of filing of CAFO	\$194.81
13	within 390 days of filing of CAFO	\$194.81

14	within 420 days of filing of CAFO	\$194.81
15	within 450 days of filing of CAFO	\$194.81
16	within 480 days of filing of CAFO	\$194.81
17	within 510 days of filing of CAFO	\$194.81
18	within 540 days of filing of CAFO	\$194.81
19	within 570 days of filing of CAFO	\$194.81
20	within 600 days of filing of CAFO	\$194.81
21	within 630 days of filing of CAFO	\$194.81
22	within 660 days of filing of CAFO	\$194.81
23	within 690 days of filing of CAFO	\$194.81
24	within 720 days of filing of CAFO	\$194.64

27. 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 methods below.

United States Postal Service using the following address:

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

Other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.) using the following address:

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

Contact Person: Natalie Pearson (314) 418-4087

28. 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;

Pamela McIlvaine  
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.

29. 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 31<sup>st</sup> 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.
30. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, the 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.
31. 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 **FOUR THOUSAND SIX HUNDRED and TWENTY-SEVEN DOLLARS (\$4,627. 00)** 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.

32. 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.
33. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, the 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, the 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.

34. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
35. This CAFO shall be binding upon the Respondent and its successors and assigns.
36. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to this CAFO.

**VI. Effective Date**

37. 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:** Ocean Yam, L.L.C.  
**Docket No.:** CAA-04-2012-1518(b)

By: Henry Shitrit Date: 7/10/2012  
Name: Henry Shitrit  
Title: president

**Complainant:** U.S. Environmental Protection Agency

By: Douglas Neely for Date: 8/10/12  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

**APPROVED AND SO ORDERED** this 23 day of August, 2012.

By: Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

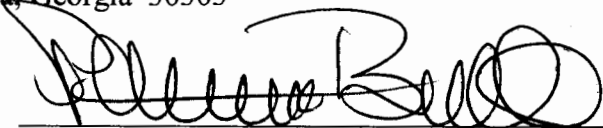
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Ocean Yam, L.L.C., Docket

Mr. Henry Shitrit (via Certified Mail, Return Receipt Requested)  
Owner  
Ocean Yam, L.L.C.  
14418 Ocean Highway  
Pawleys Island, South Carolina 29585

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

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

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

By: 

Date: 8-23-12

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

(404) 562-9511