

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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HEARINGS CLERK
EPA--REGION 10

In the Matter of:)
)
United States Department of)
Energy and Washington Closure)
Hanford LLC,)
)
Respondents.)
)
United States Department of)
Energy Hanford (WA) facility)
)

DOCKET NO. CAA-10-2014-0073.

**CONSENT AGREEMENT AND
FINAL ORDER**

I. STATUTORY AUTHORITY

1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).

2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegate this authority to the Regional Judicial Officer in Region 10.

3. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and the United States Department of Energy (“DOE” or “Respondent”) and Washington Closure Hanford LLC (“WCH” or “Respondent”) agree to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

4. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

5. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”), has been delegated the authority to sign consent agreements between EPA and

the party against whom a penalty is proposed to be assessed pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

6. EPA and the United States Department of Justice have jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

7. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CAA, together with the specific provisions of the CAA and implementing regulations that EPA alleges Respondents violated.

III. ALLEGATIONS

8. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated regulations that govern the emissions, handling, and disposal of asbestos. These asbestos National Emission Standards for Hazardous Air Pollutants regulations are found at 40 C.F.R. Part 61, Subpart M (“Asbestos NESHAP”).

9. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and the implementing regulations at 40 C.F.R. Part 70, established an operating permit program for certain sources, including “major sources” of air pollution, as defined in §7661(2).

10. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that, after the effective date of any permit program approved or promulgated under Title V of the CAA, it shall be unlawful for any person to operate a major source, and certain other sources, except in compliance with a permit issued by a permitting authority under Title V of the CAA.

11. EPA granted full approval of Washington’s Title V permit program on December 2, 2002 and the program became effective on January 2, 2003. [67 FR 71479 (December 2, 2002)].

12. Violations of Title V program requirements and permits are subject to federal enforcement under Section 113(a)(3) of the CAA, 42 U.S.C. §7413(a)(3).

13. DOE is the owner of 586 square miles of real property located in Benton and Franklin Counties, Washington, known as the Hanford Site (“Hanford”).

14. In December 2006, Washington issued the 2006 Renewal of the Hanford Site Air Operating Permit No. 00-05-006 to DOE (“Hanford Title V Permit”). In April 2013, Washington issued Renewal 2 of the Hanford Title V Permit.

15. The Hanford Title V Permit incorporates the Asbestos NESHAP.

16. The requirements of 40 C.F.R. § 61.145 of the Asbestos NESHAP apply to each owner or operator of a demolition or renovation activity. 40 C.F.R. § 61.145(a).

17. “Owner or operator of a demolition or renovation activity” is defined at 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.”

18. “Demolition” is defined at 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.”

19. A “facility” is defined at 40 C.F.R. § 61.141 as “any institutional, commercial, public, industrial, or residential structure, installation, or building . . . and any active or inactive waste disposal site.”

20. Each structure, installation, or building located at Hanford is or was a “facility” as defined at 40 C.F.R. § 61.141.

21. Respondent DOE is the owner of a demolition or renovation activity as defined at 40 C.F.R. § 61.141.

22. DOE contracted in 2005 with Respondent WCH to conduct remediation of Hanford facilities and contaminated sites, including decontamination and demolition of nuclear materials production facilities, which had been constructed with Asbestos Containing Materials (“ACM”) components.

23. Respondent WCH conducted demolition activities, as defined at 40 C.F.R. § 61.141, at a number of buildings or structures located at Hanford, including the 1902-Water Tower in January 2010.

24. Respondent WCH is an operator of a demolition or renovation activity as defined at 40 C.F.R. § 61.141.

25. Asbestos-Containing Waste Material (“ACWM”) is defined at 40 C.F.R. § 61.141 as any waste that contains commercial asbestos and is generated by a source covered by the Asbestos NESHAP.

26. Regulated Asbestos-Containing Material (“RACM”) is defined at 40 C.F.R. § 61.141 as friable asbestos material, Category I nonfriable ACM that has become friable or that will be or has been subjected to sanding, grinding, cutting, or abrading, or Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder during the demolition or renovation.

27. On August 7-8, 2012, an EPA inspector conducted an inspection of Hanford to determine compliance with the Asbestos NESHAP.

Count I

(Failure to Submit Adequate Notification of Intent to Demolish Prior to Demolition)

28. 40 C.F.R. § 61.145(b) requires that an owner or operator of a demolition or renovation activity to which this section applies provide notification to the EPA Administrator or her delegatee of its intention to demolish or renovate a facility prior to the commencement of the demolition or renovation.

29. The requirements of 40 C.F.R. § 61.145(b) are incorporated into the Hanford Title V Permit.

30. 40 C.F.R. § 61.145(b) applied to the demolition of the 1902-Water Tower.

31. Respondent WCH did not provide adequate notification pursuant to 40 C.F.R. § 61.145(b) of the demolition to the EPA Administrator or her delegatee.

32. Respondents DOE and WCH violated the Hanford Title V Permit and 40 C.F.R. § 61.145(b) by failing to submit adequate notification pursuant to 40 C.F.R. § 61.145(b) to the EPA Administrator or her delegatee prior to asbestos demolition activities.

Count II

(Failure to Remove RACM Prior to Demolition Activities)

33. 40 C.F.R. § 61.145(c)(1) requires the owner or operator of a demolition or renovation activity to remove all RACM from a facility prior to beginning any activity that would break up, dislodge, or similarly disturb the material, provided that the combined amount of RACM is at least 260 linear feet on pipes or at least 160 square feet on other facility components or at least 35 cubic feet off facility components where the length or area could not be measured.

34. The requirements of 40 C.F.R. § 61.145(c) are incorporated into the Title V Permit.

35. On or about October 1, 2009, WCH completed an Asbestos Inspection and Sampling Report for the 1902-Water Tower. The purpose of the inspection was to identify building materials that could potentially contain asbestos. Friable paint covering the wooden pipe chase for pipes entering and exiting the tank tested positive for asbestos. Approximately 1,600 square feet of wood surface may have contained asbestos paint.

36. In January 2010, Respondent WCH demolished the 1902-Water Tower.

37. The combined amount of RACM which WCH failed to remove from the 1902-Water Tower prior to demolition activities exceeded 260 linear feet or 160 square feet.

38. Respondents DOE and WCH violated the Hanford Title V Permit and 40 C.F.R. § 61.145(c)(1) by not removing RACM from the 1902-Water Tower prior to demolition activities.

IV. CONSENT AGREEMENT

39. Respondents admit the jurisdictional allegations contained in Part III of this CAFO.

40. Respondents neither admit nor deny the specific factual allegations or legal conclusions set forth in Part III of this CAFO. Respondents are entering this CAFO to save the risk, time, and cost of litigation with EPA.

41. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into consideration the size of the business, the economic impact of the penalty on the business, Respondents' full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violation, as well as other relevant factors. After considering all of these factors, EPA has determined and Respondents accept that an appropriate penalty to settle this action is \$44,000.

42. Respondents agree to pay the total civil penalty set forth in paragraph 41 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

43. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to one of the following addresses based on the method of delivery:

By U.S. Postal Mail:
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

By UPS, Federal Express, or overnight mail
U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
St. Louis, MO 63101
314-418-1028

Respondents must note on the check Respondents' name and address, the case name and the docket number of the case.

44. Respondents must deliver photocopies of the check described in Paragraph 43 via United States mail to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

John Pavitt
U.S. Environmental Protection Agency
Alaska Operations Office
222 W 7th Ave., #19
Anchorage, Alaska 99513-7588

45. If Respondents fail to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 42, the entire unpaid balance of the penalty and applicable accrued interest shall become immediately due and owing. Such failure may also subject Respondent WCH to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the assessed penalty under the CAA. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review. If Respondent WCH fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent WCH shall also be responsible for payment of the following amounts:

(a) Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

(b) Attorney's Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), if Respondents fail to pay the assessed penalty and interest on a timely basis, Respondent WCH shall also be required to pay the United States' enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondents' outstanding penalties accrued from the beginning of such quarter.

46. The penalty described in Paragraph 41, including any additional costs incurred under Paragraph 45, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

47. The undersigned representatives of Respondents certify that they are authorized to enter into the terms and conditions of this CAFO and to bind their respective Respondent to this document.

48. Except as described in Paragraph 45, each party shall bear its own fees and costs in bringing or defending this action.

49. Respondents expressly waive any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V of this CAFO, including any right to confer with the EPA Administrator under 40 C.F.R. § 22.31(e) with regard to this case. Respondents expressly waive the notice requirement and its opportunity to request a hearing on the order pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).

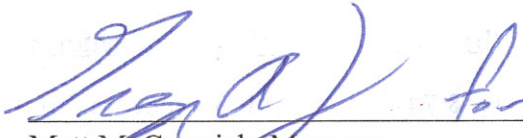
50. The provisions of this CAFO shall bind Respondents and their respective officers, directors, agents, servants, employees, successors, and assigns.

51. The above provisions are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

3/14/14

FOR RESPONDENT DOE:

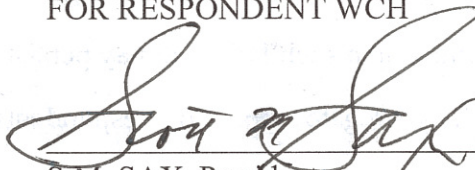


Matt McCormick, Manager
Richland Operations Office

DATED:

3/13/2014

FOR RESPONDENT WCH

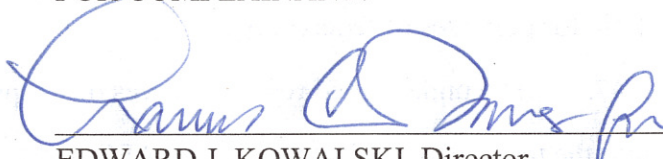


S.M. SAX, President
Washington Closure Hanford, LLC

DATED:

3/21/14

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

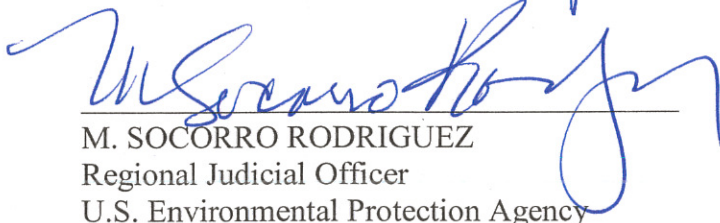
52. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with these terms of settlement.

53. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder.

54. Respondents shall pay a civil penalty in the amount of \$44,000, as provided in Part IV.

55. The Final Order is effective upon filing.

SO ORDERED this 1st day of April, 2014



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: United States Department of Energy and Washington Closure Hanford LLC, Docket No.: CAA-10-2014-0073**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

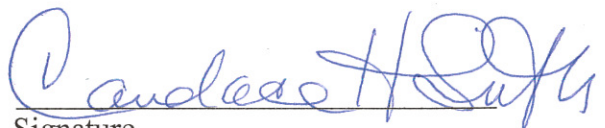
Bruce Covert
Director
Environmental Safety, Health, and Quality Assurance
Washington Closure Hanford LLC
2620 Fermi Avenue
Richland, Washington 99354-1798

Mr. Matthew S. McCormick
Manager
U.S. Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Kathleen Doster, Esq.
U.S. Environmental Protection Agency
Federal Facilities Enforcement Office
1200 Pennsylvania Ave., N.W., MC 2261A
Washington, DC 20460

DATED this 2nd day of April, 2014


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

