

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)**

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In The Matter Of:)
)
Yankee Fiber Control, Inc.)
2 Dexter Road)
East Providence, RI 02914)
)
Respondent)
_____)

EPA Docket No. CAA-01-2009-0035 ORC
OFFICE OF
REGIONAL HEARING CLERK
**CONSENT AGREEMENT and
FINAL ORDER**

I. INTRODUCTION

The United States Environmental Protection Agency - Region 1 ("EPA"), as Complainant, and Yankee Fiber Control, Inc. ("Yankee"), as Respondent, enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO informs Respondent of EPA's intention to assess a penalty against Yankee for an alleged violation of Section 112 of the Clean Air Act ("Act" or "CAA"), 42 U.S.C. § 7412, and of regulations promulgated under Section 112, the National Emission Standards for Hazardous Air Pollutants for asbestos, 40 C.F.R. Part 61, Subpart M ("Asbestos NESHAP"). The CAFO also informs Respondent of its right to request a hearing.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 113(d) of the CAA, 42 U.S.C. § 7413(d). Complainant and Respondent (collectively, the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

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Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

II. PRELIMINARY STATEMENT

1. Respondent is a corporation organized under the laws of Rhode Island, has its principal place of business at 2 Dexter Road in East Providence, Rhode Island, and is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

2. On April 8, 2008, EPA issued an Immediate Compliance Order [No. CAA/ASB-ICO-2008-007] to Yankee, pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), citing a violation of Asbestos NESHAP notification requirements arising out of a regulated *renovation*¹ Yankee performed at Garner House, Brown University (Providence, Rhode Island), in April, 2008. EPA issued the Immediate Compliance Order based upon a determination by EPA that Yankee failed to provide EPA with proper prior, written notification, as required by the Asbestos NESHAP, at 40 C.F.R. § 61.145(b)(3).

3. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. For purposes of this proceeding, Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA’s factual findings or allegations of violation herein, Respondent consents to the terms of this CAFO.

1. Words that appear in italics upon first use herein indicate terms defined in the Asbestos NESHAP and are intended to be used as defined therein, at 40 C.F.R. § 61.141.

4. Respondent acknowledges that it has been informed of the right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

5. By signing this CAFO, Respondent certifies that it is presently operating in compliance with Section 112 of the Clean Air Act and the Asbestos NESHAP regulations.

III. EPA FINDINGS

6. EPA finds, based on its investigation of facts and circumstances underlying Yankee's participation as an *owner or operator of a demolition or renovation activity*, that Respondent violated the Asbestos NESHAP notification requirements applicable to the renovation operations which occurred at Brown University- Met Chemistry Room 202, 131 Brown Street, Providence, RI (the "Brown Street Renovation") in December 2008.

7. EPA finds that Brown Street Renovation involved the *stripping or removal of regulated asbestos-containing material ("RACM")* in an amount of at least 260 linear feet on pipes, 160 square feet on other *facility components* or 35 cubic feet off facility components where the length or area could not be measured previously and, accordingly, that the renovation was subject to the Asbestos NESHAP. With respect to the Brown Street Renovation, EPA finds that Respondent failed to provide prior written notification of intent to renovate to EPA at least ten (10) *working days* before work began, as required by 40 C.F.R. § 61.145(b)(3), and that Respondent, accordingly, is subject to penalties under

Section 113(d) of the Act.

IV. TERMS OF SETTLEMENT

8. In light of the above, and taking into account the factors enumerated in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), EPA's October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy and Appendix III thereto (the May 5, 1992 Asbestos Demolition and Renovation Civil Penalty Policy), and such other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of one thousand dollars (\$1,000) in settlement of the violations alleged herein.

9. Respondent shall pay the penalty of \$1,000 within thirty (30) days of receipt of this CAFO signed by the Regional Judicial Officer.

10. Respondent shall make payment by submitting a bank or certified check, to the order of the "Treasurer, United States of America," in the amount of \$1,000, to:

U.S. EPA, Region 1
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

and shall provide copies of the check to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (Mail Code RAA)
One Congress Street, Suite 1100
Boston, MA 02114-2023

and

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Peter Kudarauskas, Asbestos NESHAP Coordinator
U.S. Environmental Protection Agency
Region 1 (Mail Code SEP)
One Congress Street, Suite 1100
Boston, MA 02114-2023

Respondent shall include the case name and docket number (*In re: Yankee Fiber Control, Inc.*, CAA-01-2009-0035) on the face of the check.

11. If Respondent fails to pay the civil penalty it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, 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. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d).

12. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this Consent Agreement and Final Order as penalties within the meaning of Section 1.162-21 of the Internal

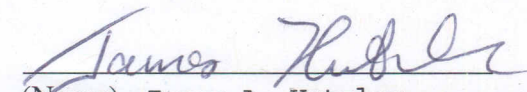
Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

13. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, for the specific violation alleged in this CAFO. Except as otherwise provided herein, EPA reserves all civil and criminal enforcement authorities, and specifically reserves its authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

14. The Parties each shall bear its own costs and attorneys fees in the action resolved by this CAFO and Respondent specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

15. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent:

	President	7/9/09
(Name) James A. Hutzler	(Title)	(Date)

Yankee Fiber Control, Incorporated
2 Dexter Road
East Providence, RI 02914

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For EPA Region 1:

Suzen Shadkin
(Name)
Office of Environmental Stewardship
EPA Region 1

Office Director
(Title)

08/04/09
(Date)

and:

Peter Kudarauskas
Peter Kudarauskas, Asbestos NESHAP Coordinator
Toxics and Pesticides Unit
Office of Environmental Stewardship
EPA Region 1

Date: 7/27/2009

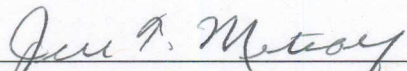
Of Counsel:
Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
Office of Environmental Stewardship
EPA Region 1

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FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent, Yankee Fiber Control, Inc., is ordered to comply with the terms of the above Consent Agreement, effective upon filing.

Date: Aug. 18, 2009



Jill T. Metcalf, Acting Regional Judicial Officer
EPA Region 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

One Congress Street, Suite 1100 (SEP)
Boston, Massachusetts 02114-2023

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BY HAND

August 21, 2009

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 (New England)
One Congress St., Suite 1100 (RCH)
Boston, MA 02114-2023

Re: In the Matter of: Yankee Fiber Control, Inc., Docket No. CAA-01-2009-0035
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Dear Ms. Santiago:

Please find enclosed for filing in the above-mentioned enforcement case the original and one copy of the Consent Agreement and Final Order ("CAFO"). This CAFO effectively concludes the matter. I hereby certify that, on this date, I served a copy of the CAFO on Respondent, by certified mail.

If you have any questions, please contact me at 617-918-1404.

Thank you for your assistance in this matter.

Sincerely,

Peter Kudarauskas, Environmental Engineer
Toxics and Pesticides Unit
Office of Environmental Stewardship
EPA Region 1

Enclosures

cc: James A. Hutzler, Yankee Fiber Control, Inc. (Certified Mail)
David Spink, Rhode Island Department of Health