

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF

MATTHEW BUPP, d/b/a
LENDERS GROUP MORTGAGE
COMPANY, LENDERS GROUP and
L&S RECYCLING, INC.,

DOCKET NO. CAA-03-2008-0179

RESPONDENTS

CONSENT AGREEMENT AND FINAL ORDER

I.
PRELIMINARY STATEMENT

1. Pursuant to Sections 113(a)(3) and (d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7413(a) and (d), the Director of the Land and Chemicals Division for the United States Environmental Protection Agency, Region III ("EPA" or the "Complainant"), initiated this administrative proceeding for the assessment of civil penalties against Matthew C. Bupp, d/b/a LENDERS GROUP MORTGAGE COMPANY, LENDERS GROUP and L&S RECYCLING, INC. (collectively, the "Respondents"), by issuance of an Administrative Complaint and Notice of Opportunity for Hearing, dated April 24, 2008 (the "Complaint"). The Complaint, incorporated herein by reference, alleges that Respondents violated Sections 112 and 114 of the Act, 42 U.S.C. §§ 7412 and 7414, and regulations promulgated thereunder at 40 C.F.R. Part 61, Subpart M, in connection with the demolition of a facility known as "W.S. Frey Co.," located at 2037 River Road, Bainbridge, Pennsylvania 17502 (the "Facility"). This Consent Agreement and the accompanying Final Order (collectively, the "CAFO"), resolve all violations alleged in the Complaint against Respondents.
 2. For the purpose of this proceeding, Respondents each admit the jurisdictional allegations set forth in Section I of the Complaint.
 3. Respondents neither admit nor deny the factual allegations contained in the Complaint and in EPA's Findings of Fact, as set forth in this Consent Agreement.
 4. Respondents neither admit nor deny the legal conclusions contained in the Complaint and in EPA's Conclusions of Law, as set forth in this Consent Agreement.
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5. For the purpose of this proceeding, Respondents each expressly waive their right to a hearing on any issue of fact or law set forth herein.
6. Pursuant to Sections 113(a)(3) and (d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (d), and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is THIRTEEN THOUSAND FIVE HUNDRED DOLLARS (\$13,500.00).
7. For the purpose of this proceeding, Respondents each consent to the issuance of this Consent Order, and consent to the payment of a civil penalty in the amount and in the manner set forth therein.
8. Complainant and Respondents each agree to pay their own costs and attorney fees. Respondents agree not to seek costs and attorneys fees from Complainant, the EPA or the federal government, and Complainant agrees that it will not seek costs and attorneys fees from Respondents.
9. Complainant, the EPA and the United States reserve any and all rights and remedies available to them to enforce the provisions of this Consent Agreement and the attached Final Order, the Act, its implementing provisions and regulations, and any other federal laws and/or regulations pursuant to which they have jurisdiction, following the entry of this Consent Agreement and the attached Final Order.
10. Complainant shall have the right to reopen this Consent Agreement or to institute a new and separate action to recover civil penalties for the claims and allegations made herein if Complainant obtains evidence that any representations and/or information made by either Respondent with respect to its compliance under the Act are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of actions, civil or criminal, which Complainant, EPA and/or the United States may have under law or equity in such event.

II.
FINDINGS OF FACT

11. EPA incorporates by reference all factual allegations contained in the Complaint.

III.
CONCLUSIONS OF LAW

12. EPA incorporates by reference all legal conclusions contained in the Complaint.

IV.
SETTLEMENT RECITATION

13. Complainant and each of the Respondents enter into this Consent Agreement in order to fully settle and resolve all allegations set forth in the Complaint, without adjudication of any issue of law or fact.
14. In full settlement of any and all charges and allegations set forth in the Complaint against each of the Respondents, and in consideration of each provision of this CAFO, Respondents each consent to the assessment and payment of their respective share of the total civil penalty, THIRTEEN THOUSAND FIVE HUNDRED DOLLARS (\$13,500.00), which Respondents each agree to pay in accordance with the terms set forth below. Such civil penalty amount paid by each Respondent shall become due and payable upon receipt by Respondents of a true and correct copy of the fully-executed and filed CAFO in accordance with the terms set forth in this Consent Agreement. 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 L&S Recycling, Inc. shall pay its \$3,500.00 share of the total civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent L&S Recycling, Inc., and Respondent Matthew Bupp shall pay its \$10,000.00 share of the total civil penalty (plus any applicable interest) in accordance with the payment terms set forth in Paragraph 15 below of this Consent Agreement.
15. The civil penalty of TEN THOUSAND DOLLARS (\$10,000.00) assessed against **Respondent Matthew Bupp** as set forth in Paragraph 14 above, may be paid in six(6) monthly installments, with interest at the rate of one (1) percent (1%) per annum, on the outstanding principal balance in accordance with the following schedule:
 - a. 1st Payment: The first payment in the amount of one thousand six hundred and sixty-six dollars, consisting of a principal payment of \$1,666.66 and an interest payment of \$0.00, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
 - b. 2nd Payment: The second payment in the amount of one thousand six hundred and eighty dollars and thirty-six cents (\$1,680.36), consisting of a principal payment of \$1,666.66 and an interest payment of \$13.70, shall be paid within sixty (60) days of the date on which this CAFO is mailed or hand-delivered to Respondent Bupp;
 - c. 3rd Payment: The third payment in amount of one thousand six hundred and seventy-two dollars and fourteen cents (\$1,672.14), consisting of a principal payment of \$1,666.66 and an interest payment of \$5.48, shall be paid within

ninety (90) days of the date on which this CAFO is mailed or hand-delivered to Respondent Bupp;

d. 4th Payment: The fourth payment in amount of one thousand six hundred and seventy dollars and seventy-seven cents (\$1,670.77), consisting of a principal payment of \$1,666.66 and an interest payment of \$4.11, shall be paid within one hundred and twenty (120) days of the date on which this CAFO is mailed or hand-delivered to Respondent Bupp;

e. 5th Payment: The fifth payment in amount of one thousand six hundred and sixty-nine and forty cents (\$1,669.40), consisting of a principal payment of \$1,666.66 and an interest payment of \$2.74, shall be paid within one hundred and fifty (150) days of the date on which this CAFO is mailed or hand-delivered to Respondent Bupp;

f. 6th Payment: The sixth payment in the amount of one thousand six hundred and sixty-eight dollars and seven cents (\$1,668.07), consisting of a principal payment of \$1,666.70 and an interest payment of \$1.37, shall be paid within one hundred and eighty (180) days of the date on which this CAFO is mailed or hand-delivered to Respondent Bupp.

Pursuant to above schedule, Respondent Bupp will remit total principal payments for the civil penalty in the amount of ten thousand dollars (\$10,000.00), and total interest payments in the amount of twenty-seven dollars and forty cents (\$27.40).

If Respondent Bupp fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 15 above, the entire balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty, along with any interest that has accrued up to the time of such payment. In addition, Respondent Bupp shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraph 19, in the event of any such failure or default.

Notwithstanding Respondent Bupp's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth in Paragraph 15 above, Respondent Bupp may pay his portion of the entire civil penalty (\$10,000.00), within thirty (30) calendar days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent and, thereby avoid the payment of interest pursuant 40 C.F.R. § 13.11(a) as described in Paragraph 19 below. In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

16. The aforesaid settlement amount is based upon EPA's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 1113(e) of the Clean Air Act, 42 U.S.C. § 7414(e); EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991, as clarified January 17, 1992; and Appendix III to the Clean Air Act Stationary Source Civil Penalty Policy, entitled Asbestos Demolition and Renovation Civil Penalty Policy, revised May 5, 1992, adjusted for inflation pursuant to 40 C.F.R. Part 19.
17. Payment of the civil penalty amount required under the terms of Paragraphs 14 and 15 above, shall be made as follows:

- a. Mailing (*via first class 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO, 63197-9000

Contact: Craig Steffen, (513) 487-2091
Eric Volck, (513) 487-2105

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

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

- c. All payment made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- d. By electronic fund 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”)

- e. By automatic clearinghouse (“ACH”) to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 – checking

Contact: John Schmid, (202) 874-7026

- f. Online payments can be made at WWW.PAY.GOV by entering “sfo 1.1” in the search field, and opening the form and completing the required fields.

18. All payments shall also reference the above case caption and docket number, DOCKET NO. CAA-03-2008-0179. At the same time that any payment is made, Respondents shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and to Richard Ponak (3WC32), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

19. 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 also to assess a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, the failure of either Respondent 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.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this 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).

The cost of the Agency'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.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent 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).

20. Respondents each agree not to deduct for federal tax purposes the civil penalty paid pursuant to this CAFO.

Other Applicable Laws

21. Nothing in this CAFO shall relieve either of the Respondents of their obligation to comply with all applicable Federal, State, and local laws and regulations.

Reservation of Rights

22. This CAFO resolves only EPA's civil claims for penalties against Respondents for the specific violations alleged in the Complaint and herein. EPA reserves the right to commence action against any person, including Respondents, 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.

Full and Final Satisfaction

23. This settlement shall constitute full and final satisfaction of all civil claims for penalties which EPA may have against Respondents under Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), for the specific violations alleged in the Complaint herein. Compliance with this CAFO shall not be a

defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

Counterparts

24. The parties agree that this CAFO may be executed in corresponding parts, and that the body of this CAFO, together with the counterpart signature pages, will be considered one unified CAFO.

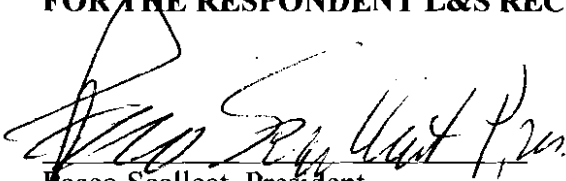
The undersigned representatives of Respondents certify that he or she is fully authorized to execute this Consent Agreement and to legally bind the Respondent to this Consent Agreement.

**FOR THE RESPONDENTS MATTHEW C. BUPP
d/b/a LENDERS GROUP MORTGAGE COMPANY,
LENDERS GROUP:**

Matthew C. Bupp

Date

FOR THE RESPONDENT L&S RECYCLING, INC.:

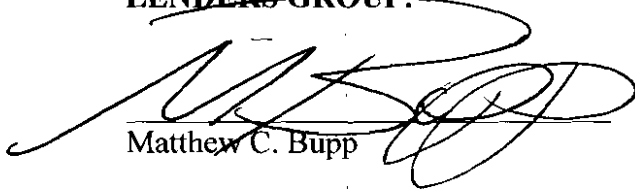


Pasco Scalleat, President

3 3 - 10
Date

The undersigned representatives of Respondents certify that he or she is fully authorized to execute this Consent Agreement and to legally bind the Respondent to this Consent Agreement.

**FOR THE RESPONDENTS MATTHEW C. BUPP
d/b/a LENDERS GROUP MORTGAGE COMPANY,
~~LENDERS GROUP:~~**



Matthew C. Bupp

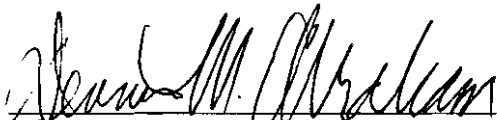
3/3/10
Date

FOR THE RESPONDENT L&S RECYCLING, INC.:

Pasco Scalleat, President

Date


**FOR THE COMPLAINANT,
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION III**



DENNIS M. ABRAHAM
Senior Assistant Regional Counsel

3/9/10
Date

Accordingly, the Land and Chemicals Division, United States Environmental Protection Agency, Region III, recommends that the Regional Judicial Officer issue the attached Final Order. The amount of the recommended civil penalty assessment is THIRTEEN THOUSAND FIVE HUNDRED DOLLARS (\$13,500.00).



Abraham Ferdas, Director
Land and Chemicals Division

3/11/10
Date

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF	:	
	:	
MATTHEW BUPP, d/b/a	:	
LENDERS GROUP MORTGAGE	:	
COMPANY, LENDERS GROUP and	:	
L&S RECYCLING, INC.,	:	DOCKET NO. CAA-03-2008-0179
	:	
RESPONDENTS	:	

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III, and Respondents Matthew Bupp, d/b/a LENDERS GROUP MORTGAGE COMPANY, LENDERS GROUP and L&S RECYCLING, INC., have executed a document entitled "Consent Agreement", which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, pursuant to Sections 112 and 113 of the Clean Air Act, as amended, 42 U.S.C. §§ 7412 and 7413 ("CAA"), and the Consolidated Rules of Practice, and having determined based on the parties' representation in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), Respondent Matthew

Bupp, d/b/a LENDERS GROUP MORTGAGE COMPANY, LENDERS GROUP is assessed a civil penalty of \$10,000.00, and Respondent L&S Recycling, Inc. is assessed a civil penalty of \$3,500.00, for a combined total of THIRTEEN THOUSAND FIVE HUNDRED DOLLARS (\$13,500.00) in settlement of the civil claims alleged in the Complaint.

It is FURTHER ORDERED that Respondent Matthew Bupp shall pay his 1st civil penalty installment of \$1,666.66 (as shown on attachment "A") within thirty (30) days of the date that this Final Order is filed with the Regional Hearing Clerk, U.S. EPA, Region III. Interest on any unpaid balance of the total civil penalty paid by Respondent Matthew Bupp will begin to accrue on the effective date of this Final Order. However, EPA will not seek to recover interest on any amount of the total \$10,000.00 total civil penalty that is to be paid by Respondent Matthew Bupp 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) (currently 1%). All payments (or installment payments) made pursuant to the attached Consent Agreement and this Final Order shall be made by cashier's check or certified check made payable in accordance with paragraphs 17 of the attached Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

3/22/10
Date

Renee Sarajian
Renee Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency

CAFO amount **10,000.00**

	Balance	principle pay	prin due	Payment Int	TOTAL payment	interest	Int rate	daily rate
pay 1- No interest 0-30 days	10,000.00	1,666.66	8,333.34	0	1,666.66	0		
pay 2	8,333.34	1,666.66	6,666.68	13.698641	1,680.36	0.01	0.228311	
pay #3	6,666.68	1,666.66	5,000.02	5.479463	1,672.14	0.01	0.182649	
pay #4	5,000.02	1,666.66	3,333.36	4.1096055	1,670.77	0.01	0.136987	
pay #4	3,333.36	1,666.66	1,666.70	2.7397479	1,669.40	0.01	0.091325	
pay#5	1,666.70	1,666.70	0.00	1.3698904	1,668.07	0.01	0.045663	
TOTALS	0.00	10,000.00		\$ 27.40	\$ 10,027.40			

princ plus int **10,027.40**

Attachment "A"

Interest Due	princ due	interest due	total payment
0.00	1,666.66	0.00	1,666.66
13.70	1,666.66	13.70	1,680.36
5.48	1,666.66	5.48	1,672.14
4.11	1,666.66	4.11	1,670.77
2.74	1,666.66	2.74	1,669.40
1.37	1,666.70	1.37	1,668.07
27.40	\$ 10,000.00	\$ 27.40	10,027.40