

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Hugh W. Martinez 2/25/20
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CWA-01-2020-0006

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Oscar's Abatement LLC
29 1/2 Meadow Street
Hartford, CT 06114

Total Dollar Amount of Receivable \$ 27,832 Due Date: 3/26/20

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1st \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number



U.S. ENVIRONMENTAL PROTECTION AGENCY
EPA REGION 1 - NEW ENGLAND
5 Post Office Square, Suite 100
Boston, MA 02109-3912

OFFICE OF
REGIONAL COUNSEL

BY HAND

February 25, 2020

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 – New England
5 Post Office Square, Suite 100 (Mail Code 04-6)
Boston, MA 02109-3912



Re: *In the Matter of Oscar's Abatement LLC*, Docket No. CAA-01-2020-0006; Approved Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a Consent Agreement and Final Order (CAFO) to both initiate and resolve the above-referenced enforcement case. Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the CAFO and this cover letter were mailed to Respondent's counsel in the manner indicated.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hugh W. Martinez".

Hugh W. Martinez, Senior Enforcement Counsel
Counsel for Complainant
U.S. EPA Region 1

Enclosures

cc: Peter R. Knight, Esquire
Robinson & Cole LLP

Jordan Alves, Asbestos NESHAP Coordinator, EPA Region 1 (electronically)

RECEIVED

FEB 25 2020

EPA ORC WS
Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

_____)	
In the Matter of:)	
)	Docket No. CAA-01-2020-0006
Oscar's Abatement LLC)	
29½ Meadow Street)	CONSENT AGREEMENT
Hartford, CT 06114)	AND FINAL ORDER
)	
Proceeding under Section 113 of the)	
Clean Air Act, 42 U.S.C. § 7413)	
_____)	

I. INTRODUCTION

The United States Environmental Protection Agency, Region 1 ("EPA"), as Complainant, and Oscar's Abatement LLC, as Respondent, enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO notifies Respondent that EPA intends to assess penalties for 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 Standard for Hazardous Air Pollutants for asbestos, 40 C.F.R. Part 61, Subpart M ("Asbestos NESHAP"), by Respondent. 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.

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. Oscar's Abatement LLC ("Oscar's" or "Respondent") is a limited liability company organized under the laws of Connecticut with a principal place of business at 29½ Meadow Street in Hartford, CT. Oscar R. Ardon is an owner and member of the company who holds himself out as Respondent's President.

2. Respondent is a "person," as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

3. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), provides authority for the assessment of civil administrative penalties of up to \$25,000 per day of violation for violations of, among other things, regulations promulgated under Section 112 of the Act. This \$25,000 statutory maximum penalty amount was increased, under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990 and EPA's Civil Monetary Penalty Inflation Adjustment Rule, at 40 C.F.R. Part 19, to \$48,192 per day of violation for violations occurring after November 2, 2015 where penalties are assessed on or after January 13, 2020. *See* 28 U.S.C. § 2461 note, Pub. L. 114-74, Section 701 (Nov. 2, 2015); 85 Fed. Reg. 1751 (January 13, 2020).

4. The Administrator of EPA and the Attorney General for the U.S. Department of Justice have jointly determined that this action, which addresses certain violations that commenced more than 12 months ago, is an appropriate administrative penalty action under Section 113(d)(1) of the Act.

5. The Administrator of EPA, under Section 112 of the Act, has promulgated the Asbestos NESHAP regulations at 40 C.F.R. Part 61, Subpart M.

6. Under the Asbestos NESHAP, certain inspection, notification, work practice, and waste disposal requirements at 40 C.F.R. §§ 61.145(a), 61.145(b), 61.145(c), and 61.150 apply to each *owner or operator of a demolition or renovation activity*¹ at a regulated *facility* if the combined amount of *regulated asbestos-containing material (RACM)* to be *stripped, removed, dislodged, cut, drilled, or similarly disturbed* meets or exceeds the regulatory threshold amount (hereinafter, the "Threshold Quantity") of at least 80 linear meters (260 linear feet) on pipes, at least 15 square meters (160 square feet) on other *facility components*, or at least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously. *See* 40 C.F.R. § 61.145(a)(4).

7. Pursuant to the Asbestos NESHAP at 40 C.F.R. §§ 61.145(a) and 61.145(b), an owner or operator of a demolition or renovation activity must, among other things, provide prior written notice of intention to demolish or renovate. For *planned renovation operations* involving at least the Threshold Quantity of RACM, 40 C.F.R. §§ 61.145(a)(4) and 61.145(b)(3) require that such prior written notification be submitted to EPA at least ten (10) *working days* before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material).

8. 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

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. *See* 40 C.F.R. § 61.141.

of violation herein, consents to the terms of this CAFO.

9. 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.

10. 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. Respondent also certifies, to the best of its information and belief, that the information provided to EPA during the course of this enforcement matter, including on ability to pay issues, is true, accurate, and complete.

III. EPA FINDINGS

11. EPA makes these findings that Respondent violated Section 112 of the Act and applicable Asbestos NESHAP notification requirements based on the investigation of facts and circumstances underlying Respondent's participation, as an owner or operator of a demolition or renovation activity, in renovation and asbestos abatement activities at the following two elementary schools in Norwalk, Connecticut: (a) the Wolfpit Elementary School at 1 Starlight Drive in Norwalk ("Wolfpit School"); and (b) the Rowayton Elementary School at 1 Roton Avenue in Norwalk ("Rowayton School").

12. On or about March 14, 2018, EPA Region 1's Asbestos NESHAP Coordinator, Jordan Alves, provided compliance assistance information to Respondent's President, Oscar Ardon, regarding the notification requirements under the Asbestos NESHAP regulations

including, but not limited to, the need to provide prior, written notice to EPA for regulated demolition and renovation operations.

13. On or about August 7, 2018, Respondent submitted a proposal to the City of Norwalk Public Schools (“Norwalk”) for the removal and disposal of approximately 469 square feet of asbestos-containing insulation material from boilers and associated exhaust equipment from the Wolfpit School (the “Wolfpit Renovation”).

14. Laboratory analysis of samples collected from the insulation materials involved in the Wolfpit Renovation showed that the material contained greater than one percent asbestos and was “regulated asbestos-containing material (RACM),” as defined at 40 C.F.R. § 61.141. Such laboratory analysis was conducted using the Polarized Light Microscopy (“PLM”) method specified in 40 C.F.R. § 61.141. *See* Appendix E of 40 C.F.R. Part 763, Subpart E.

15. On or about August 7, 2018, Respondent submitted a proposal to Norwalk for the removal and disposal of approximately 785 square feet of vinyl floor tile from the Rowayton School (the “Rowayton Renovation”).

16. Laboratory analysis of samples collected from the vinyl tile and associated mastic material involved in the Rowayton Renovation showed that the mastic contained greater than one percent asbestos and was “regulated asbestos-containing material (RACM),” as defined at 40 C.F.R. § 61.141. Such laboratory analysis was conducted using the PLM method specified in 40 C.F.R. § 61.141 and Appendix E of 40 C.F.R. Part 763, Subpart E.

17. On or about August 10, 2018, Respondent mailed a form, entitled “Asbestos Abatement Notification Form,” to the Connecticut Department of Public Health (“CT DPH”)

concerning a “renovation” Oscar’s was to conduct at the Wolfpit School that listed a start and completion date of August 20, 2018 and August 27, 2018, respectively. This notification for the Wolfpit School job disclosed the “type and amount of asbestos to be abated” as 469 square feet of boiler insulation identified as *friable asbestos material*.

18. On or about August 10, 2018, Respondent mailed a form, entitled “Asbestos Abatement Notification Form,” to the CT DPH concerning a “renovation” Oscar’s was to conduct at the Rowayton School that listed a start and completion date of August 20, 2018 and August 24, 2018, respectively. This notification for the Rowayton School job disclosed the “type and amount of asbestos to be abated” as 785 square feet of floor tile and mastic identified as *Category I nonfriable asbestos-containing material (ACM)*.

19. On or about August 20, 2018, Respondent commenced renovation activities at both the Wolfpit School and the Rowayton School (collectively, the “Schools” or “Facilities”), each of which is a “facility,” as defined at 40 C.F.R. § 61.141.

20. From on or about August 20, 2018 until on or about August 22, 2018, Respondent conducted work at the Wolfpit School as part of the Wolfpit Renovation that included, without limitation, the stripping or removal of boiler insulation that was friable asbestos material, as defined by 40 C.F.R. § 61.141.

21. From on or about August 20, 2018 until on or about August 22, 2018, Respondent conducted work at the Rowayton School as part of the Rowayton Renovation that included, without limitation, the stripping or removal of floor tile and mastic that was Category I nonfriable ACM, as defined by 40 C.F.R. § 61.141.

22. During the course of the Rowayton Renovation, on information and belief, Respondent's employees and/or agents stripped or removed vinyl tile and its associated asbestos-containing mastic material using a mechanical chipper that involved the sanding, grinding, cutting, or abrading of such tile and mastic material.

23. On information and belief, on or around August 22, 2018, Respondent was instructed by the City of Norwalk Public Schools and/or Norwalk's hygienist retained for the Wolfpit and Rowayton Renovations, Hygenix, Inc. ("Hygenix"), to stop work at both locations so that an asbestos compliance assessment could be undertaken and, if needed, adjustments could be made by Respondent.

24. On or about August 23, 2018, Respondent submitted to EPA a form entitled "Notification of Demolition and Renovation" for the Wolfpit Renovation. This notification for the Wolfpit Renovation disclosed the type and amount of asbestos to be removed as 384 square feet of boiler insulation and 85 square feet of breeching insulation, all of which was identified as RACM. The Wolfpit notification was signed and dated on August 23, 2018 and listed the scheduled start and completion dates for asbestos removal as August 20, 2018 and August 27, 2018, respectively.

25. On or about August 23, 2018, Respondent submitted to EPA a form entitled "Notification of Demolition and Renovation" for the Rowayton Renovation. This notification for the Rowayton Renovation disclosed the type and amount of asbestos to be removed as 785 square feet of floor tile/mastic and identified it as RACM. The Rowayton notification was signed and dated August 23, 2018 and listed the scheduled start and completion dates for

asbestos removal as August 20, 2018 and August 27, 2018, respectively.

26. On or about February 1, 2019, the State of Connecticut Department of Public Health (“CTDPH”) entered into a Consent Order (Petition No. 2018-11) with Oscar’s Abatement LLC to resolve allegations of violation under Connecticut asbestos abatement standards, at Title 19a R.C.S.A. §§ 19a-332a-1 through 19a-332a-16, that arose out of an asbestos abatement operation conducted by Respondent, in or around February and March 2018, as part of the demolition of a former Senior Center in Southington, CT. Under the Consent Order with CTDPH, to resolve such alleged violations of specific asbestos notification, recordkeeping, and work practice requirements, Respondent agreed to pay a \$7,000 civil penalty and certify compliance with Connecticut asbestos abatement licensure requirements. *See* Title 20, R.C.S.A. §§ 20-440-1 through 20-440-9 (rev. 03/06/15).

27. On or about February 26, 2019, EPA issued a Clean Air Act Reporting Requirement to Respondent (the “Reporting Requirement”) under Section 114 of the Act, 42 U.S.C. § 7414, seeking further, detailed information pertaining to both the Wolfpit Renovation and the Rowayton Renovation (collectively, the “Renovations”).

28. On or about March 21, 2019, Respondent provided EPA with a written response to the Reporting Requirement.

29. On or about July 31, 2019, EPA issued a Clean Air Act Reporting Requirement to the City of Norwalk Public Schools seeking information pertaining to the Renovations under Section 114 of the Act, 42 U.S.C. § 7414 and, in a response dated August 30, 2019, the City of Norwalk Public Schools provided EPA with a written response thereto.

30. The approximately 469 square feet of insulation material involved in the Wolfpit Renovation was RACM, as defined at 40 C.F.R. § 61.141, and exceeded the Threshold Quantity set forth in 40 C.F.R. § 61.145(a)(4).

31. The approximately 785 square feet of floor tile and mastic material involved in the Rowayton Renovation was RACM, as defined at 40 C.F.R. § 61.141, and exceeded the Threshold Quantity set forth in 40 C.F.R. § 61.145(a)(4).

32. Each of the Renovations was a “renovation,” as defined at 40 C.F.R. § 61.141, and for each, Respondent was an “owner or operator of demolition or renovation activity,” as defined at 40 C.F.R. § 61.141, subject to the Asbestos NESHAP requirements.

33. With respect to the Renovations, Respondent failed to provide EPA with prior written notification of intention to renovate at least ten (10) working days prior to the start of the operations, as required by 40 C.F.R. § 61.145(b).

34. Based on the above-referenced violations of the Asbestos NESHAP and Section 112 of the Act, Respondent is properly subject to the assessment of civil penalties pursuant to CAA Section 113(d), 42 U.S.C. § 7413(d).

IV. TERMS OF SETTLEMENT

35. 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”), the Civil Monetary Penalty Inflation Adjustment Rule (40 C.F.R. Part 19), EPA’s latest civil penalty inflationary guidance (effective January 15, 2020),

and such other factors as justice may require, including Respondent's ability to pay the penalty and EPA findings under 40 C.F.R. § 13.18(a), EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of twenty-seven thousand eight hundred and thirty-two dollars (\$27,832) in settlement of the violations alleged in Section III, above.

36. Respondent shall pay the penalty of \$27,832, in two installments, within 60 days of the effective date of this CAFO, in the following manner:

- a. Payment of the first installment in the amount of \$15,000 is due within 30 calendar days of the effective date of this CAFO. If the due date for this payment falls on a weekend or federal holiday, then the due date is the next business day.
- b. Payment of the second installment totaling \$12,885, an amount that includes \$53 in interest at a rate of 5 percent per annum, is due within 60 calendar days of the effective date of this CAFO. If the due date for this payment falls on a weekend or federal holiday, then the due date is the next business day.
- c. Each payment shall be made by remitting a check or making an electronic payment, as described below. Each check or other payment shall reference "*In the Matter of Oscar's Abatement LLC, Consent Agreement and Final Order, EPA Region 1,*" Respondent's name and address, and the EPA Docket Number of this action (CAA-01-2020-0006), shall be in the amounts stated above, and shall be payable to "Treasurer, United States of America." Each payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, New York 10045

Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

- d. At the time of each payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100 (Mail Code 04-6)
Boston, MA 02109-3912

and to

Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100 (Mail Code 04-3)
Boston, MA 02109-3912

Notice of payment may be given to Mr. Martinez via e-mail, at Martinez.hugh@epa.gov.

37. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay all or any portion of the civil penalty, Respondent will be subject to an action to compel full payment plus interest, enforcement expenses (including attorneys' fees and costs for collection proceedings), and a nonpayment penalty. Interest will be assessed on any past due civil penalty amount if the penalty is not paid within sixty (60) calendar days of the effective date of this CAFO. Interest on the civil penalty amount will accrue from the effective date and

will be assessed at rates established in accordance with 26 U.S.C. § 6621(a)(2). A quarterly nonpayment penalty will also be assessed for each calendar quarter during which the failure to pay persists. The nonpayment penalty will be ten (10) percent of the total amount of any penalties, interest, enforcement expenses, and nonpayment penalties which is unpaid as of the beginning of each calendar quarter. If a collection action is necessary, the validity, amount, and appropriateness of the penalty shall not be subject to review.

38. 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 the purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 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.

39. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, for the specific violations alleged in Section III of this CAFO.

40. This CAFO in no way relieves Respondent of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action 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.

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

42. Respondent certifies that the signatory listed below is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent, Oscar's Abatement LLC:

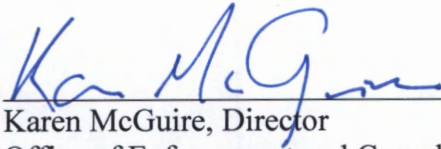


Oscar R. Ardon

President
(Title)

2/6/2020
(Date)

For Complainant:

A handwritten signature in blue ink, appearing to read "Karen McGuire", is written over a horizontal line.

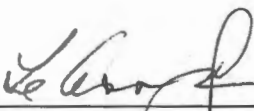
Karen McGuire, Director
Office of Enforcement and Compliance Assurance
U.S. EPA, Region 1

Date: 2-20-20

V. **FINAL ORDER**

Pursuant to 40 C.F.R. § 22.18 of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent, Oscar's Abatement LLC, is hereby ORDERED to comply with the terms of the Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

2/21/20
(Date)



LeAnn W. Jensen, Regional Judicial Officer
EPA-Region 1

In Re: Oscar's Abatement LLC, CAA-01-2020-0006

CERTIFICATE OF SERVICE

I hereby certify that the foregoing cover letter and Consent Agreement and Final Order were delivered in the following manner to the addressees listed below:

Original and One Copy by
Hand Delivery to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code 04-6)
Boston, MA 02109-3912

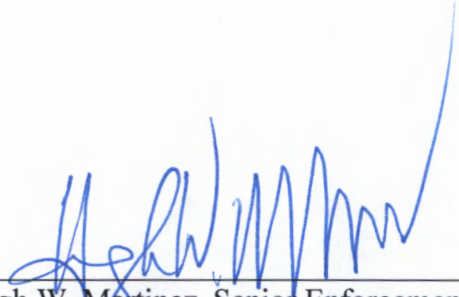
One Copy by Overnight
Courier to:

Peter R. Knight, Esquire
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103

Date:

2/25/2020

Signed: _____


Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1 (Mail Code 04-3)
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Phone (617) 918-1867
Fax (617) 918-0867
martinez.hugh@epa.gov