

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2021-0028
)	
FTR and WRIGHT BROTHERS, THE)	CONSENT AGREEMENT
BUILDING COMPANY, EAGLE LLC,)	
)	
Boise, Idaho and Eagle, Idaho)	
)	
Respondents.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement 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).

1.2. 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 issues, and FTR and Wright Brothers, the Building Company, Eagle LLC (“Respondents”) agree to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. Part III of this Consent Agreement 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 the implementing regulations that Respondents are alleged to have violated.

III. ALLEGATIONS

3.1. EPA has promulgated national emission standards for hazardous air pollutants pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, including standards for asbestos. These standards are codified at 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos ("Subpart M").

3.2. According to 40 C.F.R. § 61.140, the requirements of Subpart M apply to demolitions and renovations.

3.3. 40 C.F.R. § 61.141 defines "demolition" 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 and "renovation" as altering a facility or one or more

facility components in any way, including the stripping or removal of regulated asbestos-containing material (RACM) from a facility component.

3.4. "Facility" includes any institutional, commercial, public, industrial, or residential structure, installation, or building, subject to exclusions not relevant here. 40 C.F.R. § 61.141.

3.5. "Facility component" means any part of a facility including equipment. 40 C.F.R. § 61.141.

3.6. "Regulated asbestos-containing material" (RACM) is (a) Friable asbestos material, (b) Category I nonfriable asbestos-containing material that has become friable, (c) Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart. 40 C.F.R. § 61.141.

3.7. 40 C.F.R. § 61.141 defines "strip" as taking off RACM from any part of a facility or facility components.

3.8. 40 C.F.R. § 61.141 defines "remove" as taking out RACM or facility components that contain or are covered with RACM from any facility.

3.9. 40 C.F.R. § 61.141 defines the "owner or operator of a demolition or renovation activity" 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.

3.10. According to Section 302(e) of the CAA, 42 U.S.C. § 7602(e), the term "person" includes an individual, corporation, partnership, or association.

3.11. Respondents are corporations organized under the laws of the state of Idaho and are therefore “persons” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.12. On or about February 7, 2020, Respondents removed approximately 250 square feet of asbestos-containing vinyl composite tile (VCT) flooring from a commercial building located at 11193 Emerald Street in Boise, Idaho that was formerly a tortilla factory (“the Facility”).

3.13. The former tortilla factory is a “facility” as that term is defined at 40 C.F.R. § 61.141.

3.14. The asbestos-containing VCT flooring became friable through the removal process, making this material RACM under Subpart M.

3.15. The removal of RACM from the Facility on or about February 7, 2020 constitutes a “renovation” under Subpart M.

3.16. Respondents operated, controlled, or supervised the renovation at the Facility on or about February 7, 2020, making them “operators” under Subpart M.

COUNT I

3.17. 40 C.F.R. § 61.145(a) requires the owner or operator of a demolition or renovation activity to thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos prior to the commencement of the demolition or renovation.

3.18. On or about February 7, 2020, Respondents removed from the Facility approximately 540 square feet of asbestos-bearing drywall with joint compound, a material that could potentially be RACM.

3.19. On or about February 27, 2020, Respondent Wright Brothers, the Building Company, Eagle LLC tested remnants of the drywall with joint compound taken from the Facility.

3.20. Neither Respondent tested the drywall and joint compound for asbestos prior to February 27, 2020.

3.21. Respondents therefore violated 40 C.F.R. §§ 61.145(a) by failing to thoroughly inspect the part of the Facility where the renovation occurred for the presence of asbestos prior to the commencement of the renovation.

COUNT II

3.22. 40 C.F.R. §§ 61.145(a)(4) and 61.145(b)(3)(i) require each owner or operator of a subject renovation activity to provide EPA with written notice of intention to renovate at least 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), if the combined amount of RACM on facility components other than pipes to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is at least 15 square meters (160 square feet).

3.23. Respondent FTR submitted a notice to EPA on February 4, 2020, stating that renovation work would start at the Facility on February 19, 2020.

3.24. On or about February 7, 2020, Respondents removed approximately 250 square feet of RACM from facility components at the Facility.

3.25. Respondents therefore violated 40 C.F.R. § 61.145(b)(3)(i) by failing to provide EPA notice of their intent to renovate at least 10 working days before beginning the renovation.

ENFORCEMENT AUTHORITY

3.26. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess administrative penalties for violations of Subpart M.

3.27. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$48,762 per day of violation.

IV. TERMS OF SETTLEMENT

4.1. Respondents admit the jurisdictional allegations of this Consent Agreement.

4.2. Respondents neither admit nor deny the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). After considering these factors, EPA has determined and Respondents agree that an appropriate penalty to settle this action is \$36,300 (the "Assessed Penalty").

4.4. Respondents agree to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondents must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondents must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

John Pavitt
U.S. Environmental Protection Agency
Region 10
pavitt.john@epa.gov

4.7. If Respondents fail to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondents may be subject 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 collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondents fail to pay any portion of the Assessed Penalty in full by its due date, Respondents shall 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 contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondents fail to pay the Assessed Penalty and interest on a timely basis, Respondents shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' 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 and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representatives of Respondents certify that they are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondents to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondents expressly waive any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondents and their agents, servants, employees, successors, and assigns.

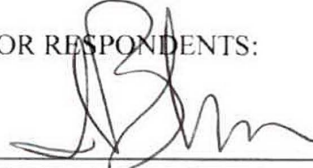
4.14. Respondents consent to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

1/14/2021

FOR RESPONDENTS:



IAN BERKSON, Secretary
FTR

1/14/2021



ZACH HIGGINS, President
Wright Brothers, the Building Company,
Eagle LLC

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2021-0028
)	
FTR and WRIGHT BROTHERS, THE)	FINAL ORDER
BUILDING COMPANY, EAGLE LLC,)	
)	
Boise, Idaho and Eagle, Idaho)	
)	
Respondents.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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 and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2021.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: FTR and WRIGHT BROTHERS, THE BUILDING COMPANY, EAGLE LLC, Docket No.: CAA-10-2021-0028**, 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:

Danielle Meinhardt
U.S. Environmental Protection Agency, Region 10
meinhardt.danielle@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was delivered electronically to:

Ian Berkson
Secretary
FTR
ian@ftr-inc.com

Zach Higgins
President
Wright Brothers, The Building Company, Eagle LLC
ZHiggins@wbtc.com

DATED this ____ day of _____ 2021.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10