



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

In Reply Refer To Mail Code: 3RC50

VIA UPS

May 4, 2011

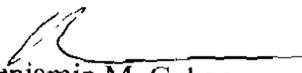
Paul Logan, Esq.  
475 Allendale Road  
King of Prussia, PA 19406

Re: Consent Agreement and Final Order (CAFO) Resolving ScottA Equipment's Liability  
EPA Docket No. CAA-03-2010-0408

Dear Mr. Logan:

Enclosed find a true and correct copy of the CAFO in this matter, which was filed with the Regional Hearing Clerk today, May 4, 2010 (the "Effective Date"). Please note that your client's payment obligations, method of payment etc. are set forth in Section IV of the CAFO. I understand that this concludes your representation of ScottA Equipment & Material Sales LLC. If my understanding is wrong, please advise in writing.

Sincerely,

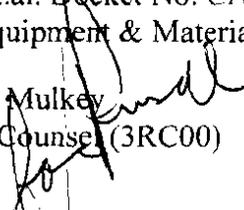
  
Benjamin M. Cohan  
Senior Assistant Regional Counsel

Enclosures

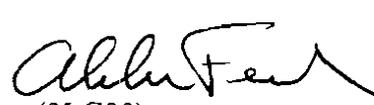
cc: Richard Ponak (3LC62)  
Matthew Goodrich, Esq.  
Trustee Leonard Zito, Trustee

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**SUBJECT:** Partial Consent Agreement and Final Order Resolving Violations of the CAA (Asbestos NESHAP) in the Matter of Mr. Thomas Caracio et.al. Docket No. CAA-03-2010-0408 – Settlement of ScottA Equipment & Material Sales, LLC's liability

**FROM:** Marcia E. Mulkey   
Regional Counsel (3RC00)

and

Abraham Ferdas, Director   
Land and Chemicals Division (3LC00)

**TO:** Renée Sarajian  
Regional Judicial Officer (3RC00)

In accordance with 40 C.F.R. §§ 22.18(b)(2) and (3) of the Consolidated Rules of Practice, the attached Consent Agreement and Final Order ("CAFO") resolves claims against ScottA Equipment & Material Sales, LLC's (Respondent); *however, the claims against the remaining Respondents, Mr. Leonard N. Zito, Trustee and Mr. Thomas Caracio, are still pending at this time.* The claims at issue allege violations of Section 112 of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §7412, based on violations of regulations set forth at 40 C.F.R. Part 61, Subpart M (National Emission Standards for Hazardous Air Pollutants) (the "Asbestos NESHAP"). These allegations are fully described in Paragraphs 2-43 of the Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") issued on September 28, 2010, which is incorporated by reference and attached to the enclosed Consent Agreement. These allegations relate to Respondents' failure to provide written notice of intent to demolish a building known as the former Sandt's Market, owned and/or operated by Mr. Caracio and Trustee Zito, and located at 1021 South Broadway, Wind Gap, PA 18091 ("the Facility") in accordance with section 61.145(b) of the Asbestos NESHAP (Count I). The Complainant also alleges that Respondents failed to have a trained on-site representative (Count II), and failed to remove RACM prior to demolition activity (Count III).

The terms of the CAFO provide that the Respondent will pay a civil penalty in the amount of eleven thousand dollars (\$11,000). EPA calculated this penalty in accordance with Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and the Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991 (the "Policy"), and modifications thereto in accordance with the Civil Monetary Penalty Inflation Adjustment Rule ("CMPIAR"), set forth at 40 C.F.R. Parts 19. In accordance with Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and in the process of calculating the proposed civil penalty, EPA considered, as appropriate, the size of the business, the economic impact of the penalty on the business, the violators' full compliance history and good faith efforts to comply, the duration of the violation, payment by the violators of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the

seriousness of the violation.

We recommend that you sign the attached Final Order and return it to the Air Branch of the Office of Regional Counsel for further processing.

Attachment

cc: Paul Logan, Esq. (Counsel to ScottA Equipment & Material Sales, LLC)  
Matthew Goodrich, Esq. (Counsel to Mr. Caracio)  
Trustee Zito (*Pro Se*)

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region III**

**1650 Arch Street**

**Philadelphia, Pennsylvania 19103-2029**

IN RE:

Mr. Thomas Caracio  
P.O. Box 218  
Wind Gap, PA 18091

and

Mr. Leonard N. Zito, Trustee  
641 Market Street  
Bangor, PA 18013

and

Scotta Equipment & Materials Sales LLC  
HC #1 P.O. Box 70  
Saylorsburg, PA 18353

Respondents

Former Sandt's Market  
1021 South Broadway  
Wind Gap, PA 18091

Facility

Consent Agreement

Docket No. CAA-03-2010-0408

**CONSENT AGREEMENT WITH SCOTTA EQUIPMENT & MATERIAL SALES LLC**

**WHEREAS**, this Consent Agreement pertains exclusively to settlement of Respondent Scotta Equipment & Material Sales LLC's liability as set forth herein; and

**WHEREAS**, to date, EPA and Respondent Mr. Leonard N. Zito, Trustee, and Respondent Thomas Caracio have not entered into a Consent Agreement with respect to the above captioned matter (Complaint Docket No. CAA-03-2010-0408);

**I. Preliminary Statement**

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III (“EPA” or “Complainant”), and Scotta Equipment & Materials Sales LLC (a/k/a A Scott Enterprise, Inc.) (referred to herein as Respondent), pursuant to Section 113 of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), set forth at 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §22.18(b)(2) and (3)).

2. The violations cited herein pertain to the Respondent’s alleged failure to comply with Section 112 of the CAA, 42 U.S.C. § 7412, and certain implementing regulations found at 40 C.F.R. Part 61, Subpart M, the National Emission Standards for Asbestos (the “Asbestos NESHAP”).

3. In accordance with Section 22.18(b)(2) and (3) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(b)(2) and (3), Complainant hereby resolves, as part of the settlement set forth herein, the claims identified in this Consent Agreement.

## **II. General Provisions**

4. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the accompanying Final Order (collectively "this CAFO").
5. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 4, above.
6. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CAFO, the issuance of the accompanying Final Order, or the enforcement of the CAFO.
7. For the purpose of this proceeding only, Respondent hereby expressly waive its right to a hearing pursuant to section 113(d)(2)(A) of the CAA, 42 U.S.C. § 113(d)(2)(A), concerning the finality or validity of this CAFO, or with respect to any issue of law or fact set forth in this CAFO. The Respondent also waive any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.

## **III. Findings of Fact and Conclusions of Law**

9. Paragraphs 2 - 43 of the Administrative Complaint and Notice of Opportunity for Hearing ("Complaint"), filed with the Regional Hearing Clerk on September 29, 2010, are hereby incorporated by reference in this CAFO as if fully set forth herein. The subject paragraphs set forth the factual and legal allegations made by EPA which constitute the basis of the claims being settled and resolved in this CAFO.

**IV. Settlement Recitation, Settlement Conditions and Civil Penalty**

10. EPA and Respondent enter into this Consent Agreement and the attached Final Order in order to fully settle and resolve all allegations set forth in Section III, "Findings of Fact and Conclusions of Law" above, and all claims for civil penalties pursuant thereto.

11. In settlement of the alleged violations set forth in Paragraph 9 above, Respondent hereby consents to the assessment and payment of a civil penalty in the amount of eleven thousand dollars (\$11,000), pursuant to Section 113(d) of the CAA, 42 U.S.C. §113(d). Respondent further consents to the issuance of the attached Final Order.

12. Pursuant to Section 113(e) of the CAA, 42 U.S.C. §113(e), EPA has considered the statutory penalty factors set forth therein (which include the size of the business, good faith efforts to comply, the duration of the violation as established by any credible evidence, history of prior violations by the Respondents, the degree of culpability, and such other matters as justice may require). EPA has determined that Respondent's payment of the civil penalty shall constitute full and final satisfaction of the violations set forth in Paragraph 9 of this CAFO.

13. Payment of the eleven thousand dollars (\$11,000) civil penalty required under Paragraph 11, above, shall be made via cashier's check by the Respondent within thirty (30) days of the date that the attached Final Order is filed with the Regional Hearing Clerk, U.S. EPA, Region III, by the following payment methods, **made payable to the "United States Treasury,"** as follows:

By Regular US Postal Service Mail:

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

By Private Commercial Overnight Delivery:

U.S. Environmental Protection Agency  
Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Payment of the penalty as required by this CAFO may also be made by electronic transfer to:

Wire Transfers

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the wire transfer message should read:  
"D 68010727 Environmental Protection Agency")

Automated Clearinghouse (ACH) Transfers a/k/a Remittance Express (REX)

US Treasury REX/Cashlink ACH Receiver  
ABA= 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format: Transaction Code 22 – Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact: Jesse White 301-887-6548 or REX @ 1-866-234-5681

Any payment by the Respondent shall reference that Respondent's name and address, and the EPA Docket Number of this CAFO. A copy of Respondent's check or a copy of Respondent's electronic transfer or ACH shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)  
EPA Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029, and

Benjamin M. Cohan  
Sr. Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

14. If Respondent fails to make payment of the civil penalty set forth in Paragraph 11 above, 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 be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). In any such collection action, the validity, and appropriateness of this CAFO, or the penalty assessed hereunder, are not subject to review.

15. Each party to this CAFO agrees to pay its own costs and attorney fees. Respondent agrees that it will not seek costs and attorneys fees from the EPA or the federal government, and EPA agrees that it will not seek costs and attorneys fees from the Respondent.

16. The Respondent agrees not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to, this Consent Agreement and the attached Final Order.

**V. EFFECT OF SETTLEMENT**

17. Payment of the penalty specified in Paragraph 11, above, in the manner set forth in Section IV, above, and payment of any applicable interest, handling costs and/or late payment charges, as set forth in Section IV, above, shall constitute full and final satisfaction of all civil claims for penalties for the specific violations alleged in Paragraph 9 above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations. Except as set forth in this Section V or in Section IV above, nothing in this CAFO shall relieve Respondent of any duties or obligations otherwise imposed upon it by applicable federal, state or local laws and/or regulations.

**VI. RESERVATION OF RIGHTS**

18. This CAFO shall resolve only those civil claims which are alleged in Paragraph 9 above. Nothing in this CAFO shall be construed to limit the authority of the EPA and/or the United States to undertake action against any person, including Respondent, in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to the public health, welfare or the environment. In addition, this settlement is subject to all the 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. Nothing in this CAFO shall be construed to limit the United States' authority to pursue criminal sanctions. Furthermore, Complainant

reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations of which Complainant has jurisdiction, to enforce the provisions of this CAFO following entry of this CAFO.

**VII. PARTIES BOUND**

19. This CAFO shall apply to and be binding upon the EPA and the Respondent. By his or her signature below, the person signing this CAFO on behalf of Respondent is acknowledging and certifying that he or she is fully authorized to enter into this CAFO and to legally bind the respective Respondent to the terms and conditions of this CAFO.

**VIII. EFFECTIVE DATE**

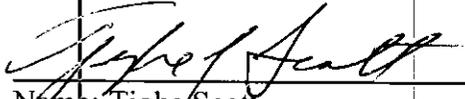
20. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

**IX. ENTIRE AGREEMENT**

21. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

Docket No. CAA-03-2010-0408

**FOR RESPONDENT SCOTTA EQUIPMENT & MATERIALS SALES LLC**  
a/k/a A SCOTT ENTERPRISE, INC.



Name: Tighe Scott  
Title: President

3-31-11

Date

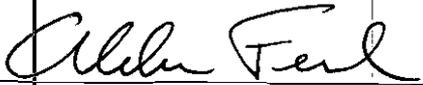
**FOR THE COMPLAINANT:  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION III**



Benjamin M. Cohan  
Assistant Regional Counsel  
U.S. EPA, Region III

4/14/11  
Date

The Land and Chemicals Division, United States Environmental Protection Agency -  
Region III, recommends that the Regional Administrator of U.S. EPA Region III, or his designee,  
issue the accompanying Final Order.



Abraham Ferdas, Director  
Land and Chemicals Division

4/21/11  
Date

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

IN RE:

Mr. Thomas Caracio  
P.O. Box 218  
Wind Gap, PA 18091

and

Mr. Leonard N. Zito, Trustee  
641 Market Street  
Bangor, PA 18013

and

Scotta Equipment & Materials Sales LLC  
HC #1 P.O. Box 70  
Saylorsburg, PA 18353

Respondents

Former Sandt's Market  
1021 South Broadway  
Wind Gap, PA 18091

Facility

Docket No. CAA-03-2010-0408

**FINAL ORDER**

The undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

**NOW THEREFORE**, pursuant to 40 C.F.R. Part 22 and Section 113 of the Clean Air Act ("CAA"), as amended, 42 U.S.C. §7413, it is hereby ordered that Scotta Equipment & Materials Sales LLC (a/k/a A Scott Enterprise, Inc.)( referred to herein as Respondent), pay a civil penalty in the amount of eleven thousand dollars (\$11,000). Payment of the aforesaid civil penalty shall be made within thirty (30) days of the effective date of this Final Order. Respondent's payment of the civil penalty shall constitute full and final satisfaction of the violations set forth in Paragraph 9 of the foregoing Consent Agreement.

The effective date of the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S. EPA Region III.

Date:

5/2/11



Renée Sarajian  
Regional Judicial Officer  
U.S. EPA, Region III

CERTIFICATE OF SERVICE

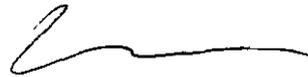
I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order (re: Docket No. CAA-03-2010-0408) was hand-delivered to the Regional Hearing Clerk EPA Region III, and that true and correct copies were mailed via UPS, to the following persons:

Paul Logan, Esq.  
475 Allendale Road  
King of Prussia, PA 19406

Matthew Goodridge  
Martino, Karasek, Martino and Lopiano-Reilly, LLP  
641 Market Street  
Bangor, Northampton County, PA 18013

Trustee Leonard N. Zito (Judge)  
Northampton County Courthouse  
669 Washington Street  
Easton, PA 18042

5/4/11  
Date



Benjamin M. Cohan  
Sr. Assistant Regional Counsel