



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

IN RE:

**Penoco, Inc.
 485 East College Ave.
 Pleasant Gap, PA 16823**

DOCKET NO. CAA-03-2011-0141

RESPONDENT

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CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant"), and Respondent, Penoco, Inc., and filed along with the attached Final Order pursuant to Section 113 of the Clean Air Act (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, 40 C.F.R. Part 22, (the "Consolidated Rules"). The Consolidated Rules, at 40 C.F.R. § 22.13(b) provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This Consent Agreement and the accompanying Final Order address an alleged violation by Respondent of Section 112 of the Clean Air Act, 42 U.S.C. § 7412 ("CAA" or the "Act") and regulations promulgated thereunder at 40 C.F.R. Part 61, Subpart M, the National Emission Standards for Hazardous Air Pollutants for Asbestos ("Asbestos NESHAP").

II. GENERAL PROVISIONS

2. For purposes of this proceeding only, Respondent admits to EPA's jurisdictional allegations as set forth in this Consent Agreement.
3. Except for Paragraph 2 above, Respondent neither admits nor denies the specific factual allegations and the conclusions of law set forth in this Consent Agreement and the attached Final Order.
4. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this

Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO"), the issuance of the accompanying Final Order, or the enforcement of the CAFO.

5. For purposes of this proceeding only, Respondent expressly waives its right to a hearing on any issue of law or fact set forth in this consent agreement and any right to appeal the accompanying Final Order.
6. Respondent consents to the issuance of the accompanying Final Order, and to the terms and conditions set forth therein, and consents to the payment of a civil penalty as set forth in this CAFO.
7. Respondent agrees to pay its own costs and attorney fees.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. In accordance with 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law.
9. Respondent, Penoco, Inc., is a Pennsylvania corporation with a primary business address of 485 College Ave., Pleasant Gap, PA 16823 and is a contractor specializing in asbestos abatement and demolition.
10. Respondent is a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).
11. Pursuant to 40 C.F.R. § 61.141 "facility means any institutional, commercial, public, industrial, or residential structure, installation, or building..." Del Monte Foods, LLC, located at 6670 Low St., Bloomsburg, PA 17815 is a facility within the meaning of 40 C.F.R. § 61.141.
12. Pursuant to 40 C.F.R. § 61.141 "Regulated Asbestos-Containing Material ('RACM') means (a) friable asbestos material, (b) Category I nonfriable asbestos containing material ('ACM') that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM 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."
13. Pursuant to 40 C.F.R. § 61.141 "remove" means to take out any RACM or facility components that contain or are covered with RACM from any facility.
14. Pursuant to 40 C.F.R. § 61.141 "renovation means altering a facility or one or more

facility components in any way, including the stripping or removal of RACM from a facility component."

15. Pursuant to 40 C.F.R. § 61.141 "demolition means 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."
16. Pursuant to 40 C.F.R. § 61.141 "owner or operator of a demolition or renovation activity means 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."
17. 40 C.F.R. § 61.145(b) provides, in pertinent part, that each owner or operator of a demolition or renovation activity to which this section applies shall: (1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable. (2) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent. (3) Postmark or deliver the notice...(i) 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)...

IV. VIOLATION

18. The allegations contained in Paragraphs 1 through 17 are incorporated herein by reference.
19. 40 CFR § 61.145(b)(1) requires that each owner or operator of a...renovation activity...shall provide the Administrator with written notice of intention to...renovate.
20. 40 CFR § 61.145(b)(3)(1) further requires that such notice shall be postmarked or delivered at least 10 working days before asbestos stripping or removal work or any other activity begins...
21. On October 5, 2010, EPA received a notice postmarked September 29, 2010 from Respondent for an asbestos renovation project at Del Monte, LLC, 6670 Low Street, Bloomsburg, PA. The project involved the removal of 290 linear feet of pipe and fitting insulation.
22. According to the notice, the asbestos removal was to begin on October 2, 2010. Under 40 C.F.R. § 61.145(b)(3)(1), the notice was required to be postmarked no later than September 21, 2010. However, the notice received by the EPA was postmarked September 29, 2010, only two days before asbestos stripping or removal work was to begin.

23. Respondent, at the time of the renovation operation for Del Monte, LLC, which began on or about October 2, 2010, was an "owner or operator of a demolition or renovation activity" as the term is defined by 40 C.F.R. § 61.141.
24. By failing to submit a notice 10 days prior to initiating asbestos stripping or removal work, Respondent violated the notification requirements of 40 C.F.R. § 61.145(b)(3)(1).

V. CIVIL PENALTY

25. In settlement of the allegations enumerated above, Respondent agrees to pay a civil penalty amount of Two Hundred Eighty Dollars (\$ 280.00) in full satisfaction of the claim alleged in this Consent Agreement. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, Section 113, 42 U.S.C. § 7413 penalty assessment criteria, including the seriousness of Respondent's violations and Respondent's good faith efforts to comply as provided in the Clean Air Act Stationary Source Civil Penalty Policy, Appendix III, adjusted for inflation pursuant to 40 C.F.R. Part 19. Such payment shall be made by Respondent within thirty (30) calendar days after the effective date of this CAFO.
26. Respondent shall pay the civil penalty amount assessed in Paragraph 25, above, plus any interest, administrative fees, and late payment penalties owed, by cashier's check, certified check, or electronic wire transfer, in the following manner:
 - A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, CAA-03-2011-0141;
 - B. All checks shall be made payable to "**United States Treasury**";
 - C. All payments made by check and sent by regular mail shall be addressed to:

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

Contact: Eric Volck 513-487-2105

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

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

Contact: 314-418-1028

- E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

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

- F. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

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: John Schmid 202-874-7026 OR REX, 1-866-234-5681

- G. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

- H. On-Line Payment Option: WWW.PAY.GOV/PAYGOV

Enter "sfo 1.1" in the search field. Open and complete the form.

27. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Magda Rodriguez-Hunt
Enforcement Officer
Land and Chemicals Division (3LC62),
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

28. 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 a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order 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 Respondent. 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 costs 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).

29. The Respondent agrees not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

VI. Reservation of Rights

30. This Consent Agreement resolves only the civil claims for the specific violations alleged in this CAFO. Nothing herein shall be construed to limit the authority of the EPA to undertake action against any person, including Respondent, in response to any condition which Complainant 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.
31. EPA reserves any rights and remedies available to it to enforce the provisions of this Consent Agreement, the Act and its implementing provisions, and of any other federal laws or regulations for which it has jurisdiction, following the entry of this Consent Agreement.
32. Respondent herein certifies that, upon investigation, to the best of its knowledge and belief, it presently is in compliance with the provisions of the Act, and the regulations promulgated thereunder, that are referenced in this Consent Agreement and that the violation alleged in the Consent Agreement has been remedied.

VII. Full and Final Satisfaction

33. Payment of the penalty specified in paragraph 25, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Sections 112 and 113(d) of the Act, 42 U.S.C. §§ 7412 and 7413(d), for the specific violation alleged in this CAFO. 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.

VIII. Parties Bound

34. This CAFO shall apply to and be binding upon the EPA, the Respondent, and the officers, directors, successors, and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.


IX. Effective Date

35. The effective date of this CAFO is the date on which the Final Order, is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, and is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

The undersigned representative of the Respondent certifies that they are fully authorized to execute this Consent Agreement and to legally bind the party they represent.

For Respondent

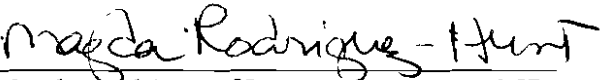
4/27/2011
Date



Timothy Sommer, President
Penoco, Inc.

For Complainant:


5/6/11
Date



Magda Rodríguez-Hunt, Enforcement Officer
Land and Chemicals Division
U.S. Environmental Protection Agency, Region III

Accordingly, I hereby recommend that the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, ratify this Consent Agreement and issue the accompanying Final Order. The amount of the recommended civil penalty assessment is Two Hundred Eighty Dollars (\$280.00).

9/21/11
Date



Abe Ferdas, Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region III



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

IN RE :

Penoco, Inc. :
485 East College Ave. :
Pleasant Gap, PA 16832 :

RESPONDENT :

DOCKET NO.: CAA-03-2011-0141

Del Monte Foods, LLC :
6670 Low St. :
Bloomsburg, PA 17815 :

FACILITY :

FINAL ORDER

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

NOW, THEREFORE, IT IS HEREBY ORDERED THAT, pursuant to Section 113 of the Clean Air Act, *as amended*, 42 U.S.C. § 7413 ("CAA"), and the Consolidated Rules of Practice, Respondent pay a civil penalty of two hundred eighty dollars (\$280.00).

The effective date of this Final Order is the date on which it is filed with the Regional Hearing Clerk.

9/22/11
Date

Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III



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

In the Matter of:

Penoco, Inc.
485 East College Ave.
Pleasant Gap, PA 16823

Respondent

Del Monte Foods, LLC
6670 Low St.
Bloomsburg, PA 17815

Facility

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. CAA-3-2011-0141

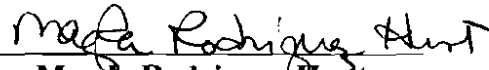
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EPA REGION III PHILA, PA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on September 23, 2011, the original and one true and correct copy of this Consent Agreement/Final Order and enclosures (Docket No. CAA-03-2011-0141) was hand-delivered to and filed with the Regional Hearing Clerk (3RC30), U.S.EPA - Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029. On September 23, 2011 a true and correct copy of the Consent Agreement/Final Order (Docket No. CAA-03-2011-0141) and enclosures was sent by Certified Mail, Return Receipt Requested, to the addressees listed below.

Mr. Timothy Sommer, President
Penoco, Inc.
485 East College Ave.
Pleasant Gap, PA 16823

Date: 9/23/11


Magda Rodriguez-Hunt
Enforcement Officer
U.S. EPA - Region III