



BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: ) DOCKET NO. CAA-10-2023-0072  
FIRST TEAM RESTORATION INC., )  
Boise, Idaho )  
Respondent. )

**CONSENT AGREEMENT**

**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 First Team Restoration Inc. (“Respondent”) agrees 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. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. 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 Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA has promulgated national emission standards for hazardous air pollutants, 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. Subpart M includes standards that apply to the owner or operator of a demolition or renovation activity. 40 C.F.R. § 61.145.

3.3. “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. 40 C.F.R. § 61.141.

3.4. “Renovation” means altering a facility or one or more facility components in any way, including the stripping or removal of regulated asbestos-containing material from a facility component. 40 C.F.R. § 61.141.

3.5. “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.

3.6. “Facility component” means any part of a facility including equipment. 40 C.F.R. § 61.141.

3.7. “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 AMC 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 regulated by Subpart M. 40 C.F.R. § 61.141.

3.8. “Asbestos-containing waste materials” means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of Subpart M. The term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, the term also includes regulated asbestos-containing

material waste and materials contaminated with asbestos including disposable equipment and clothing. 40 C.F.R. § 61.141.

3.9. “Remove” means to take out RACM or facility components that contain or are covered with RACM from any facility. 40 C.F.R. § 61.141.

3.10. “Strip” means to take off RACM from any part of a facility or facility components. 40 C.F.R. § 61.141.

3.11. “Adequately wet” means to sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then the material has not been adequately wetted. 40 C.F.R. § 61.141.

3.12. “Leak-tight” means that solids or liquids cannot escape or spill out, and also means dust-tight. 40 C.F.R. § 61.141.

3.13. “Visible emissions” means any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operation. 40 C.F.R. § 61.141.

3.14. Pursuant to Section 302(e) of the CAA, 42 U.S.C. § 7602(e), the term “person” includes an individual, corporation, partnership, or association.

3.15. Respondent is a corporation organized under the laws of the state of Idaho and is therefore a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.16. On or about May 10 to June 4, 2021, Respondent removed approximately 21,000 square feet of asbestos-containing roof shingles from First Presbyterian Church located at 950 West State in Boise, Idaho (“the Facility”).

3.17. The Facility is a “facility” as defined in 40 C.F.R. § 61.141.

3.18. Testing showed that the roof shingles contained 20% Chrysotile asbestos.

3.19. The asbestos-containing roof shingles were removed using tools that shattered and crumbled the roof shingles in the process.

3.20. The asbestos-containing roof shingles became friable through the removal process, making this material “RACM” under Subpart M.

3.21. The removal of RACM from the Facility on or about May 10 to June 4, 2021, constitutes a “renovation” under Subpart M.

3.22. The asbestos-containing roof material removed from the Facility from May 10 to June 4, 2021, is “asbestos-containing waste material” under Subpart M.

3.23. Respondent operated, controlled, and supervised the renovation at the Facility from May 10 to June 4, 2021, and as relevant to the claims below, on May 26, 2021, making Respondent the “operator” of the renovation under Subpart M.

#### COUNT 1

3.24. Under 40 C.F.R. § 61.145(c)(6)(i), each owner or operator of a subject renovation shall adequately wet all RACM, including material that has been removed or stripped, and ensure it remains adequately wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150.

3.25. On May 26, 2021, Respondent removed the asbestos-containing roof shingles dry, without water to control or suppress emissions, as they were broken during the removal process and fell from the roof. Visible emissions of asbestos-containing dust and debris were discharged to the air and found on the ground during and after Respondent’s removal of the asbestos-containing roof shingles.

3.26. Respondent left dry, friable asbestos-containing roof material scattered around the work site and did not keep the material wet until collected and contained.

3.27. Respondent therefore violated 40 C.F.R. § 61.145(c)(6)(i) by failing to adequately wet all RACM and ensure it remained adequately wet until collected and contained or treated in preparation for disposal.

COUNT 2

3.28. Under 40 C.F.R. § 61.145(c)(6)(ii), each owner or operator of a subject renovation shall carefully lower all RACM to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.

3.29. On May 26, 2021, Respondent allowed asbestos-containing roof material that was cracked and crumbling to drop from the roof to the ground. Dust and debris fell from the roof to the ground through Respondent's unlined scaffolding.

3.30. Respondent therefore violated § 61.145(c)(6)(ii) by failing to carefully lower all RACM to the ground without dropping or otherwise damaging or disturbing the material.

COUNT 3

3.31. Under 40 C.F.R. § 61.150(a), each owner or operator of a subject renovation shall discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting any of the asbestos-containing waste materials or shall use one of the emission control and waste treatment methods specified in 40 C.F.R.

§ 61.150(a)(1) through (4).

3.32. Pursuant to 40 C.F.R. § 61.150(a)(1), the owner or operator of a subject renovation may meet the requirements of 40 C.F.R. § 61.150(a) by adequately wetting the asbestos-containing waste material, taking the measures specified in 40 C.F.R. § 61.150(a)(1)(i) and (a)(1)(ii), and sealing such material in leak-tight containers while wet or, for materials that

will not fit into containers without additional breaking, putting materials into leak-tight wrapping, as provided in 40 C.F.R. § 61.150(a)(1)(iii).

3.33. On May 26, 2021, visible emissions of asbestos-containing dust and debris were discharged to the outside air during the collection and transportation of asbestos-containing waste material to a waste trailer at the Facility.

3.34. Within the waste trailer, pieces of asbestos containing waste material were loose (that is, not in bags or other containers). Additionally, at least one bag of asbestos-containing waste material was left open and unattended behind the Facility. The asbestos-containing waste material was not sealed in a leak-tight container or otherwise put in leak-tight wrapping.

3.35. In addition to failing to use the emission control and waste treatment method specified in 40 C.F.R. § 61.150(a)(1), Respondent failed to use any of the other emission control and waste treatment methods specified in 40 C.F.R. § 61.150(a)(2) through (4).

3.36. Respondent therefore violated 40 C.F.R. § 61.150(a) by discharging visible emissions to the outside air during the collection, processing, packaging, or transporting asbestos-containing waste materials and failing to use one of the emission control and waste treatment methods specified in 40 C.F.R. § 61.150(a)(1) through (4).

#### COUNT 4

3.37. Under 40 C.F.R. § 61.150(c), each owner or operator of a subject renovation shall mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. All such markings must conform with the requirements of 40 C.F.R. § 61.149(d)(1)(i) through (iii).

3.38. On May 26, 2021, Respondent loaded asbestos-containing waste material into a waste trailer used to transport waste from the Facility. The waste trailer had no visible marks or signs during the loading of waste.

3.39. Respondent therefore violated 40 C.F.R. § 61.150(c) by failing to mark vehicles used to transport asbestos-containing waste material during the loading of waste so that the signs are visible.

#### ENFORCEMENT AUTHORITY

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

3.41. 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 \$55,808 per day of violation.

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies 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 Respondent agrees that an appropriate penalty to settle this action is \$74,500 (the “Assessed Penalty”).

4.4. Respondent agrees 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: <https://www.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 979078  
St. Louis, Missouri 63197-9000

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

4.6. Concurrently with payment, Respondent 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, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
R10\_RHC@epa.gov

Alyson Skeens  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 20-C04  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
skeens.alyson@epa.gov

4.7. If Respondent fails 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, Respondent 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 Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent 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 Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent 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 Respondent's 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 representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violations alleged in Part III.

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

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

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. Respondent consents 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.

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

DATED:

10/16/2023

FOR RESPONDENT:

*Diane Berkson*  
DIANE BERKSON, President  
First Team Restoration Inc.

DATED:

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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-10-2023-0072
	)	
FIRST TEAM RESTORATION INC.,	)	<b>FINAL ORDER</b>
	)	
Boise, Idaho	)	
	)	
Respondent.	)	
	)	

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1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated 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. Respondent is 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 Respondent’s 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 \_\_\_\_\_, 2023.

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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: FIRST TEAM RESTORATION INC, Docket No.: CAA-10-2023-0072**, 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 via electronic mail to:

Erin Tanimura  
U.S. Environmental Protection Agency, Region 10  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
[Tanimura.Erin@epa.gov](mailto:Tanimura.Erin@epa.gov)

Diane Berkson  
President  
First Team Restoration Inc.  
6400 West Contractors Street, Suite 104  
Boise, Idaho 83709  
[diane@ftr-inc.com](mailto:diane@ftr-inc.com)

DATED this \_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
DANIEL MAUL  
Regional Hearing Clerk  
EPA Region 10