

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

12/6/23

_____)
In the Matter of:)
)
) Docket No. CAA-01-2023-0010
CITADEL PROPERTIES, LLC)
)
) 556 Atwells Ave., #100)
)
) Providence, RI 02908)
)
) **CONSENT AGREEMENT**
) **AND FINAL ORDER**
)
) and)
)
) STRIVE CONSTRUCTION, LLC)
)
) 556 Atwells Ave., #100)
)
) Providence, RI 02908,)
)
) Respondents.)
)
) Proceeding under Section 113(d) of the)
) Clean Air Act, 42 U.S.C. § 7413(d).)
_____)

Received by
EPA Region 1
Hearing Clerk

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Sections 113(a)(3) and (d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3) and (d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), as codified at 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region 1 (EPA). On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division, EPA Region 1, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

3. Respondents are Citadel Properties, LLC (Citadel Properties) and Strive Construction, LLC (Strive Construction) (collectively, Respondents). Each of the Respondents is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

4. Complainant initiated this proceeding against Respondents by issuing a Complaint and Notice of Opportunity for Hearing (Complaint) on September 8, 2023. The

Complaint alleged that Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and the National Emission Standard for Hazardous Air Pollutants for asbestos regulations, codified at 40 C.F.R. Part 61, Subpart M (Asbestos NESHAP).

5. Respondents filed an Answer and Request for Hearing in this proceeding on October 6, 2023.

6. Complainant and Respondents (collectively, the Parties), having agreed that settlement of this matter is in the public interest, consent to the entry of this consent agreement (Consent Agreement) and the attached final order (Final Order) without adjudication of any issues of law or fact herein. Respondents agree to comply with the terms of the Consent Agreement and Final Order (collectively, CAFO). This CAFO resolves Respondents' liability for federal civil penalties for the alleged violations of Section 112 of the CAA, 42 U.S.C. § 7412, and the Asbestos NESHAP as set forth in the Complaint.

II. JURISDICTION

7. This CAFO is entered into under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice, 40 C.F.R. Part 22.

8. EPA and the U.S. Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for administrative penalty assessment under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1); 40 C.F.R. § 19.4.

9. The Regional Judicial Officer is authorized to ratify this Consent Agreement, which memorializes a settlement between Complainant and Respondents. 40 C.F.R. §§ 22.4(b), 22.18(b).

III. TERMS OF CONSENT AGREEMENT

10. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondents:

- a. Admit the jurisdictional allegations in this Consent Agreement, and that EPA has jurisdiction over the subject matter alleged herein;
- b. Neither admit nor deny the specific factual allegations contained in the Complaint;
- c. Consent to the assessment of a civil penalty as stated below;
- d. Consent to the issuance of any specified compliance or corrective action order;
- e. Consent to the conditions specified in this Consent Agreement;

- f. Consent to any stated Permit Action;
 - g. Waive any right to contest the allegations set forth in the Complaint; and
 - h. Waive their right to appeal the Final Order accompanying this Consent Agreement.
11. For the purposes of this proceeding, Respondents also:
- a. Agree that this Consent Agreement states a claim upon which relief can be granted against Respondents;
 - b. Acknowledge that this Consent Agreement constitutes an enforcement action for purposes of considering Respondents' compliance history in any subsequent enforcement actions;
 - c. Waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).
 - d. Consent to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Massachusetts; and
 - e. Waive any rights they may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agree that federal law shall govern in any such civil action.

Penalty Payment

12. In light of the findings in section III of the Complaint, 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 ("Amendments to EPA's Civil Penalty Policies to Account for Inflation," effective January 15, 2022), and such other factors as justice may require, including Respondents' financial ability to pay a penalty, EPA has determined that it is fair and appropriate that Respondents pay a civil penalty in the amount of twenty four thousand eight hundred dollars (\$24,800) in settlement of the violations alleged in section III of the Complaint. Respondents consent to the issuance of this CAFO and consent for purposes of settlement to pay the civil penalty cited in paragraph 15.

13. Respondents certify that the statements provided to EPA on October 20, 2023, regarding Respondents' financial ability to pay a penalty, are true, accurate, and complete based

upon personal knowledge of the undersigned or his personal inquiry of the person or persons directly responsible for gathering the information, and the undersigned is aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

14. In accordance with 40 C.F.R. §§ 13.11(a)(2) and 13.18(a) and EPA's *Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Action* (2015), Respondents provided certified statements to EPA on October 20, 2023, articulating a basis for their contention that they cannot pay the civil penalty within 30 days of the Effective Date without experiencing an undue financial hardship, and EPA has determined that an alternative payment mechanism is in the best interest of the United States and will allow the repayment of the civil penalty cited in paragraph 15 in monthly installments, as specified in paragraph 15.

15. Respondents agree to:
- a. pay the civil penalty of \$24,800 in six (6) monthly installments. Interest shall be at rates established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO (Effective Date). 42 U.S.C. § 7413(d)(5). With the interest on the balance owed beyond thirty days from the Effective Date (\$551.14) spread equally across all payments, each monthly installment payment shall be in the amount of \$4,225.19. The first payment of \$4,225.19 shall be made within 30 days of the Effective Date, the second payment of \$4,225.19 shall be made within 60 days of the Effective Date, the third payment of \$4,225.19 shall be made within 90 days of the Effective Date, the fourth payment of \$4,225.19 shall be made within 120 days of the Effective Date, the fifth payment of \$4,225.19 shall be made within 150 days of the Effective Date, and the sixth payment of \$4,225.19 shall be made within 180 days of the Effective Date. If the due date for any installment payment falls on a weekend or federal holiday, then the due date is the next business day;
 - b. pay each installment payment due under this CAFO using any method, or combination of methods, provided on the website: <https://epa.gov/financial/makepayment> (for details on electronic payments, click on "Additional Instructions" under "Civil Penalties (Regions 1-10)," and identify every payment with "*In the Matter of Citadel Properties, LLC et al.*, Docket No. CAA-01-2023-0010." Do not pay the first monthly installment payment until receiving a copy of the fully executed CAFO; and
 - c. within 24 hours of payment of each monthly installment due under this CAFO, send proof of payment by e-mail to Kevin Pechulis, the Regional Hearing Clerk, and the EPA finance office at:

Kevin Pechulis, Senior Enforcement Counsel, Office of Regional Counsel
U.S. Environmental Protection Agency, Region I
Pechulis.Kevin@epa.gov

and to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
Santiago.Wanda@epa.gov

and

RI_Hearing_Clerk_Filings@epa.gov

and to:

EPA's finance office at CINWD_AcctsReceivable@epa.gov.

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with “*In the Matter of Citadel Properties, LLC et al.*, Docket No. CAA-01-2023-0010.”

16. If Respondents fail to pay any portion of any installment payment required by paragraph 15 by the due date, the entire unpaid civil penalty balance shall become immediately due and payable to the United States as of the missed payment date. Interest on such unpaid civil penalty balance shall accrue from the missed payment date in accordance with paragraph 17 until the total amount due has been received by the United States. Respondents shall be liable for such amount regardless of whether EPA has notified Respondents of their failure to pay or made a demand for payment. All payments to the United States under this paragraph shall be made via the methods described in paragraph 15.b.

17. Pursuant to 31 U.S.C. § 3717, 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. In the event that any portion of any installment payment is not paid when due, without demand, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), Respondents will be subject to an action to compel payment plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the entire unpaid civil penalty balance if any portion of any installment payment is not paid when due. In that event, interest will accrue from the missed payment date at the “underpayment rate” established pursuant to 26 U.S.C.

§ 6621(a)(2). In the event that any portion of any installment payment is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorney's fees and collection costs as provided in 42 U.S.C. § 7413(d). In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be ten (10) percent of the aggregate amount of Respondents' outstanding civil penalties and nonpayment penalties hereunder as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

18. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of all Parties and approval of the Regional Judicial Officer.

19. The provisions of this Consent Agreement shall apply to and be binding upon Respondents and their officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns.

20. By signing this CAFO, Respondents acknowledge that this CAFO will be available to the public and agree that this CAFO does not contain any confidential business information or personally identifiable information.

21. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative(s) of Respondents each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents.

22. By signing this CAFO, the parties agree that each party's obligations under this CAFO and EPA's compromise of statutory maximum penalties constitute sufficient consideration for the other party's obligations.

23. By signing this CAFO, Respondents certify that the information they have supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondents acknowledge that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

24. By signing this CAFO, Respondents certify that they are presently operating in compliance with Section 112 of the CAA, 42 U.S.C. § 7412, and the Asbestos NESHAP regulations.

25. Complainant and Respondents, by entering into this CAFO, each consent to

accept digital signatures hereupon. Respondents further consent to accept electronic service of the fully executed CAFO, by e-mail at: john@striveri.com. Respondents understand that this e-mail address may be made public when the CAFO and Certificate of Service are electronically filed and uploaded to a searchable database. Complainant has provided Respondents with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Standing Order.

IV. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER

26. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondents' liability for federal civil penalties for the violations specifically alleged in the Complaint.

27. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), for the specific violations alleged in the Complaint. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondents to comply with all applicable provisions of federal, state or local law.

28. The civil penalty due under this CAFO, and any interest, non-payment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondents agree 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 agree not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

29. This CAFO constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understandings, whether written or oral, among the Parties with respect to the subject matter hereof.

30. Nothing in this CAFO shall relieve Respondents of the duty to comply with all applicable provisions of the CAA and other federal, state or local laws or statutes, nor shall it restrict the EPA's ability to seek compliance with any applicable laws or regulations, or be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

31. EPA reserves the right to revoke this CAFO and settlement penalty if and to the

extent that EPA finds, after signing this CAFO, that any information provided by Respondents was materially false or inaccurate at the time such information was provided to EPA, and EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondents notice of its intent to revoke, which shall not be effective until received by Respondents in writing.

32. This CAFO in no way relieves Respondents or their employees 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 undertake any action against Respondents in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.


33. Except as qualified by paragraph 17 (overdue penalty), each party shall bear its own costs and fees in this proceeding including attorney's fees. Respondents specifically waive any right to seek such costs and fees from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

V. EFFECTIVE DATE


34. Respondents and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will electronically transmit a copy of the filed CAFO to Respondents. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement, in the *In the Matter of Citadel Properties, LLC et al.*, Docket No. CAA-01-2023-0010, is hereby stipulated, agreed, and approved for entry.

For Respondent, CITADEL PROPERTIES, LLC:



For Respondent, STRIVE CONSTRUCTION, LLC:



The foregoing Consent Agreement, in the *In the Matter of Citadel Properties, LLC et al.*, Docket No. CAA-01-2023-0010, is hereby stipulated, agreed, and approved for entry.

For Complainant, U. S. ENVIRONMENTAL PROTECTION AGENCY, REGION 1:

Carol Tucker, Acting Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)	
)	
CITADEL PROPERTIES, LLC)	
556 Atwells Ave., #100)	
Providence, RI 02908)	
)	
and)	Docket No.
)	CAA-01-2023-0010
)	
STRIVE CONSTRUCTION, LLC)	
556 Atwells Ave., #100)	
Providence, RI 02908,)	
)	
Respondents.)	
)	

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the EPA’s Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

Pursuant to the authority granted at 40 C.F.R. § 22.31(c) and after findings by Complainant under 40 C.F.R. §§ 13.11(a)(2) and 13.18(a), payment of the penalty in installments, with interest, as specified in the CAFO, is recommended as appropriate and in the best interest of the government since this will better ensure timely payment from these Respondents by providing sufficient time to secure and direct monies needed to cover the full penalty amount.

The Respondents are ORDERED to comply with all terms of the Consent Agreement, which shall become effective on the date it is filed with the Regional Hearing Clerk.

So ordered.

LeAnn W. Jensen, Regional Judicial Officer
U.S. EPA, Region 1