

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

In the Matter of:)
)
School District of Upper Dublin)
1580 Fort Washington Avenue)
Maple Glen, PA 19002)
)
Sargent Enterprises, Inc.)
732 Center Street)
Jim Thorpe, PA 18229)
)
RESPONDENTS¹)

DOCKET NO. CAA-03-2009-0189

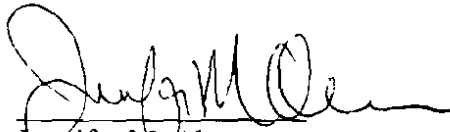
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REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

NOTIFICATION OF PARTIAL SETTLEMENT

Counsel for Complainant, the Division Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III ("EPA"), hereby provides notice to the Court that on September 29, 2009 a Consent Agreement and Final Order ("CAFO") was filed with the Regional Hearing Clerk settling the matter referenced above *with respect to Respondent School District of Upper Dublin only*. A true and correct copy of the CAFO is attached to this Notification.

Counsel for Complainant further advises the Court and notifies the parties that it is Complainant's intent to explain modifications to the penalty proposed against Respondent Sargent Enterprises, Inc., to account for civil penalties recovered in settlement from Respondents 1 Source Safety and Health, Inc. and School District of Upper Dublin, as part of Complainant's Initial Prehearing Exchange, to be filed by November 24, 2009 as per Judge Gunning's September 24, 2009 Prehearing Order. See Prehearing Order at 4.

Respectfully Submitted,


Jennifer M. Abramson
Senior Assistant Regional Counsel

OCT 1 2009

Date

¹ Respondent 1 Source Safety and Health, Inc. has been deleted from the caption on this filing in accordance with the instruction in Judge Gunning's September 24, 2009 Prehearing Order See Prehearing Order at 1 n 1.

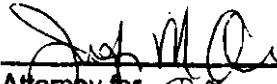
**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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In the Matter of:)
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RESPONDENTS)

CONSENT AGREEMENT

DOCKET NO. CAA-03-2009-0189

I hereby certify that the
 within is a true and correct copy
 of the original CAFO
 filed in this matter.



 Attorney for

ESTD 29 PM 4:20
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CONSENT AGREEMENT AS TO THE SCHOOL DISTRICT OF UPPER DUBLIN

I. PRELIMINARY STATEMENT

1. Pursuant to Sections 113(a)(3) and (d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a) and (d), the Director of the Land and Chemicals Division for the United States Environmental Protection Agency, Region III (EPA), initiated this administrative proceeding for the assessment of civil penalties against the School District of Upper Dublin (Upper Dublin), 1 Source Safety and Health, Inc. (1 Source), and Sargent Enterprises, Inc. (Sargent), collectively, the "Respondents" (Respondents), by issuance of a Complaint and Notice of Opportunity to Request a Hearing (Complaint) filed with the Regional Hearing Clerk on June 4, 2009. The Complaint, incorporated herein by reference, alleges that Respondents violated Section 112 of the Act, 42 U.S.C. § 7412, and regulations promulgated thereunder at 40 C.F.R. Part 61, Subpart M, during a renovation at the Upper Dublin High School, located at 800 Loch Ash Avenue in Fort Washington, Pennsylvania which began in June 2008. This Consent Agreement and the accompanying Final Order, collectively, the "CAFO" (CAFO), resolve the violations alleged in the Complaint against Respondent Upper Dublin only.
2. For the purpose of this proceeding, Respondent Upper Dublin admits the jurisdictional allegations set forth in the Complaint and herein.

3. Except as provided in paragraph 2, above, Respondent Upper Dublin neither admits nor denies the specific factual allegations contained in the Complaint and herein.
4. For the purpose of this proceeding, Respondent Upper Dublin consents to the issuance of this CAFO and agrees to comply with the terms of this CAFO.
5. For the purpose of this proceeding, Respondent Upper Dublin consents to the payment of a civil penalty in the amount and in the manner set forth in this CAFO.
6. For the purpose of this proceeding, Respondent Upper Dublin hereby expressly waives its right to contest the allegations in the Complaint and herein, and its right to appeal the Final Order accompanying this Consent Agreement.
7. Respondent Upper Dublin shall bear its own costs and attorney fees.

II. FINDINGS OF FACT

8. EPA incorporates by reference all factual allegations contained in the Complaint.

III. CONCLUSIONS OF LAW

9. EPA incorporates by reference all legal conclusions contained in the Complaint.

IV. SETTLEMENT RECITATION

10. In settlement of the above-captioned action as to Respondent Upper Dublin, Respondent Upper Dublin consents to the assessment of a civil penalty of one thousand eight hundred dollars (\$1,800), which Respondent Upper Dublin agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent Upper Dublin of a true and correct copy of the fully-executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent Upper Dublin must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent Upper Dublin.
11. The aforesaid settlement amount is based upon EPA's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e); EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991, as clarified January 17, 1992; and Appendix III to the Clean Air Act Stationary Source Civil Penalty Policy, entitled Asbestos Demolition and Renovation Civil Penalty Policy, revised May 5, 1992, adjusted for inflation pursuant to 40 C.F.R. Part 19.

12. Payment of the civil penalty amount required under the terms of Paragraph 10, above, shall be made as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

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

Contact: Craig Steffen 513-487-2091
Eric Volck 513-487-2105

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

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

314-418-1028

c. All payment made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. By electronic funds transfer ("EFT") to the following account:

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



(Field tag 4200 of Fedwire message should read "D
68010727 Environmental Protection Agency")

e. By automatic clearinghouse ("ACH") to the following account:

U S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 - checking

Contact: Jesse White
301-887-6548

f. Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

All payments shall also reference the above case caption and docket number, DOCKET NO. CAA-03-2009-0189. At the same time that any payment is made, Respondent Upper Dublin shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Stephen Forostiak (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

13. 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 also to assess a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent Upper Dublin's failure to make timely payment or to comply with the conditions in this CAFO 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 Upper Dublin. 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 cost 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).

14. Respondent Upper Dublin agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

Other Applicable Laws

15. Nothing in this CAFO shall relieve Respondent Upper Dublin of its obligation to comply with all applicable Federal, State, and local laws and regulations.

Reservation of Rights

16. This CAFO resolves only EPA's civil claims for penalties against Respondent Upper Dublin for the specific violations alleged in the Complaint and herein. EPA reserves the right to commence action against any person, including Respondent Upper Dublin, in response to any condition which EPA 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. Further, EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

17. This settlement shall constitute full and final satisfaction of all civil claims for penalties which EPA may have against Respondent Upper Dublin under Section 113(a)(3) and (d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (d), for the specific violations alleged in the Complaint and herein. 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.



Parties Bound

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

Effective Date

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


Entire Agreement

20. 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 herein.



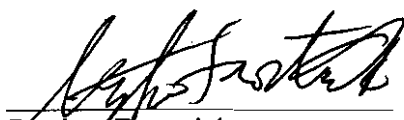
For Respondent Upper Dublin:

9-15-09
Date


Michael Pladus, Superintendent
School District of Upper Dublin

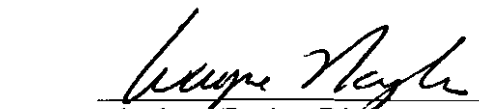
For EPA:

9-21-09
Date


Stephen Forostiak
Pesticides and Asbestos Programs Branch

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

9/24/09
Date


Abraham Ferdas, Director
Land and Chemicals Division

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FINAL ORDER

DOCKET NO. CAA-03-2009-0189

FINAL ORDER AS TO THE SCHOOL DISTRICT OF UPPER DUBLIN

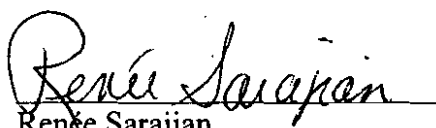
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, the School District of Upper Dublin (Upper Dublin), have executed a document entitled "Consent Agreement", which I hereby ratify as a Consent Agreement in accordance with the 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 (Consolidated Rules of Practice). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO Sections 112 and 113 of the Clean Air Act, as amended, 42 U.S.C. §§ 7412, and 7413 (CAA), and the Consolidated Rules of Practice, and

having determined based on the parties' representation in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e), Respondent Upper Dublin is assessed a penalty of one thousand eight hundred dollars (\$1,800) in settlement of the civil claims alleged in the Complaint against Respondent Upper Dublin.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

9/29/09
Date



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



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)
 Respondents)
 _____)

DOCKET NO. CAA-03-2009-0189

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

Original and one copy by hand-delivery:

Lydia Guy, Regional Hearing Clerk

Copy by Certified Mail

Thomas H. McDonough, Counsel for Upper Dublin
 Wisler Pearlstine, LLP
 Office Court at Walton Point
 484 Norristown Road, Suite 100
 Blue Bell, Pennsylvania 19422-2326

Brian Sargent, President
 Sargent Enterprises, Inc.
 732 Center Street
 Jim Thorpe, PA 18229

Date **SEP 29 2009**

Jennifer M. Abramson (3LC62)
 Senior Assistant Regional Counsel





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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EPA REGION III, PHILA, PA

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I certify that the foregoing NOTIFICATION OF PARTIAL SETTLEMENT in the above referenced matter was sent this day in the following manner to the below addressees.

Original and one copy by hand-delivery:

Lydia Guy, Regional Hearing Clerk

Copy by Regular Mail

Thomas H. McDonough, Counsel for Upper Dublin
Wisler Pearlstine, LLP
Office Court at Walton Point
484 Norristown Road, Suite 100
Blue Bell, Pennsylvania 19422-2326

Brian Sargent, President
Sargent Enterprises, Inc.
732 Center Street
Jim Thorpe, PA 18229

Copy by USEPA Pouch Mail

The Honorable Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, DC 20460-2001

Date OCT 01 2009

Jennifer M. Abramson (SLC62)
Senior Assistant Regional Counsel