

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 4

FILED

Aug 28, 2025

3:50 pm

**U.S. EPA REGION 4
HEARING CLERK**

In the Matter of:

Merit Construction Company,

Respondent.

Docket No. **CAA-04-2025-0004(b)**

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413(d), and Sections 22.13(b) 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), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without Respondent's admission of violation or any adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 113(d) of the Act.
5. Respondent is Merit Construction Company, a corporation doing business in the State of Georgia. This proceeding pertains to renovation activity conducted by the Respondent at a dental office located at 5243 Snapfinger Woods Drive, Suite 105, in Stonecrest, Georgia 30038 (Facility).

III. GOVERNING LAW

6. Any person who violates Section 112 of the CAA, 42 U.S.C. § 7412, or rule promulgated thereunder, may be assessed a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19. Each day a violation continues may constitute a separate

violation. Civil penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d), may be assessed by an administrative order.

7. Pursuant to Section 112(l) of the CAA, 42 U.S.C. § 7412(l), the EPA delegated the Administrator's authorities and responsibilities to implement and enforce emission standards and prevention requirements for asbestos under Section 112 of the CAA, 42 U.S.C. § 7412, to the State of Georgia. The State has adopted rules for asbestos that are at least as or more stringent than EPA's asbestos regulations located at 40 C.F.R. Part 61, Subpart M, promulgated pursuant to Section 112 of the CAA. See Georgia Department of Natural Resources Rules for Air Quality Control, Chapter 391-3-1-.02(9)(b)7, which adopts by reference, the Emission Standard for Asbestos, including work practices, codified at 40 C.F.R. Part 61, Subpart M. As indicated in Section 112(l)(7) of the CAA, 42 U.S.C. § 7412(l)(7), nothing in Section 112(l) of the CAA shall prohibit the Administrator from enforcing any applicable standard or requirement under Section 112 of the CAA.
8. Asbestos is a "hazardous air pollutant" as that term is defined in Section 112(a) of the CAA, 42 U.S.C. § 7412(a), and is the subject of regulations codified at 40 C.F.R. Part 61, Subpart M, "National Emission Standard for Asbestos," promulgated pursuant to Section 112 of the CAA, 42 U.S.C. § 7412.
9. A "person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department or instrumentality of the United States and any officer, agent or employee thereof.
10. A "facility" is defined in 40 C.F.R. § 61.141, in part, as any institutional, commercial, public, industrial, or residential structure, installation or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship, and any active or inactive waste disposal site.
11. "Demolition" is defined in 40 C.F.R. § 61.141 as 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.
12. "Renovation" is defined in 40 C.F.R. § 61.141 as 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.
13. An "owner or operator of a demolition or renovation activity" is defined in 40 C.F.R. § 61.141 as 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.

14. Under 40 C.F.R. § 61.145(a), each owner or operator of a demolition or renovation activity to which this section applies shall conduct a thorough inspection for asbestos-containing materials prior to beginning demolition or renovation activity or any other activity (such as site preparation that would break up, dislodge or similarly disturb asbestos material).
15. Because the EPA has delegated the Administrator's authorities and responsibilities for asbestos under Section 112 of the CAA to the State of Georgia, owners or operators of demolition or renovation activity occurring in the State must notify the Georgia Environmental Protection Division (Georgia EPD) of any such activity pursuant to 40 C.F.R. § 61.145(b). See Chapter 391-3-1-.02(9)(a) ("the word 'Administrator' as used in regulations adopted in this section shall mean the Director of the Georgia Environmental Protection Division (EPD)").

IV. FINDINGS OF FACTS

16. From approximately November 8, 2024, to March 28, 2025, Respondent conducted a renovation activity which included, but was not necessarily limited to, the removal of flooring materials from a dental office located at 5243 Snapfinger Woods Drive, Suite 105, in Stonecrest, Georgia 30038 (Facility).
17. At the time of the renovation activity, the Facility was a commercial building and therefore met the definition of a "facility," as defined in 40 C.F.R. § 61.141.
18. Respondent is the contractor responsible for the renovation activity at the Facility and therefore meets the definition of an "owner or operator of a renovation or demolition activity," as defined in 40 C.F.R. § 61.141.
19. On March 12, 2025, the EPA conducted an on-site inspection of the Facility for the purpose of assessing Respondent's compliance with the requirements of 40 C.F.R. Part 61, Subpart M.
20. In discussions and email correspondence subsequent to the inspection, Respondent confirmed that no asbestos inspection was conducted prior to beginning the renovation activity at the Facility.

V. ALLEGED VIOLATION

21. Respondent is a company operating in the State of Georgia and is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
22. Based on the EPA's compliance monitoring investigation, the EPA alleges that Respondent violated Section 112 of the Act, 42 U.S.C. § 7412, and 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos, when it failed to conduct a thorough inspection for asbestos-containing materials prior to beginning renovation activity, as required by 40 C.F.R. § 61.145(a).

VI. STIPULATIONS

23. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

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

- (a) admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
- (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the conditions specified in this CAFO;
- (e) waives any right to contest the allegations set forth in Section V (Alleged Violation) of this CAFO; and
- (f) waives its rights to appeal the Final Order accompanying this CAFO.

25. For the purpose of this proceeding, Respondent:

- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any rights it 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 CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- (d) by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations;
- (e) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO;
- (f) agrees to comply with the terms of this CAFO; and
- (g) waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the CAFO.

26. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

27. Respondent agrees to a civil penalty in the amount of **\$5,425** ("Assessed Penalty"), to be paid within thirty (30) calendar days after the Effective Date of this CAFO.
28. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. However, for any payments made after September 30, 2025, and in accordance with the March 25, 2025 Executive Order on Modernizing Payments To and From America's Bank Account, Respondent shall pay using one of the electronic payments methods listed on EPA's How to Make a Payment website and will not pay with a paper check.
29. When making a payment, Respondent shall:

- (a) Identify every payment with Respondent's name and the docket number of this Agreement, **CAA-04-2025-0004(b)**.
- (b) Concurrently with any payment or within 24 hours of any payment, serve proof of such payment to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
r4_regional_hearing_clerk@epa.gov

and

Pamela Storm, Case Development Officer
Air Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4
storm.pamela@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or 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 the appropriate docket number and Respondent's name.

30. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- (a) Interest. Interest begins to accrue from the Effective Date. If the Assessed Penalty is paid in full within thirty (30) calendar days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) calendar days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7413(d)(5), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.
- (b) Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of handling collection.
- (c) Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

31. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty per this CAFO, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- (a) Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- (b) Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- (c) Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- (d) Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and

appropriateness of the Assessed Penalty and Final Order shall not be subject to review.

32. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
33. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

34. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violation and facts specifically alleged above.
35. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall satisfy the requirements of this CAFO; but, shall not in any case 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. 40 C.F.R. § 22.18(c).
36. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
37. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
38. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
39. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
40. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.

41. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
42. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
43. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent 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 to this CAFO.
44. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
45. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges 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.
46. EPA also 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 Respondent was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
47. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
48. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE

49. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement in the matter of **Merit Construction Company, Docket No. CAA-04-2025-0004(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

William L Kizer Pres 8/21/25
Signature Date

Printed Name: William L KIZER

Title: Pres

Address: 2400 Pleasantdale Rd Atl. 30340

The foregoing Consent Agreement in the matter of **Merit Construction Company, Docket No. CAA-04-2025-0004(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Keriema S. Newman
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the Matter of:

Merit Construction Company,

Respondent.

Docket No. CAA-04-2025-0004(b)

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order 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.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the matter of **Merit Construction Company, Docket No. CAA-04-2025-0004(b)**, were filed and copies of the same were emailed to the Parties as indicated below.

Via email to all Parties at the following email addresses:

To Respondent: Mark Koehler
Merit Construction Company
2400 Pleasantdale Road
Atlanta, Georgia 30340
markk@merit-construction.com
678-618-9141

To EPA: Pamela Storm, Case Development Officer
storm.pamela@epa.gov
404-562-9197

Marirose Pratt, Associate Regional Counsel
Pratt.marirose@epa.gov
404-562-9023

Regional Hearing Clerk
r4_regional_hearing_clerk@epa.gov