



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
SAM NUNN
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA GEORGIA 30303-8960

[JUN 23 2010]

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Mr. Louis J. Gaudio
Vice-President
Quality Enterprises USA, Inc.
3894 Mannix Drive, Suite 216
Naples, Florida 34114-5406

Re: City of Marco Island, Florida
and Quality Enterprises USA, Inc.
Docket No. CAA-04-2010-1531(b)

Dear Mr. Gaudio:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served upon all parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section 20 of the CAFO, the assessed penalty of \$81,772 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the names of the respondents and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Pamela McIlvaine at (404) 562-9197.

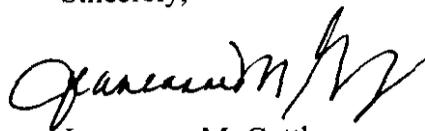
Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeaneanne M. Gettle', written in a cursive style.

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
SAM NUNN
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ATLANTA GEORGIA 30303-8960

JUN 23 2010

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Mr. James C. Riviere, PhD
Interim City Manager
City of Marco Island
50 Bald Eagle Drive
Marco Island, Florida 34145

Re: City of Marco Island, Florida
and Quality Enterprises USA, Inc.
Docket No. CAA-04-2010-1531(b)

Dear Mr. Riviere:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served upon all parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Pamela McIlvaine at (404) 562-9197.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeananne M. Gettle".

Jeananne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosure

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
City of Marco Island, Florida) Docket No. CAA-04-2010-1531(b)
)
and)
)
Quality Enterprises USA, Inc.,)
)
Respondents.)
_____)

RECEIVED
EPA REGION 4
2010 JUN 23 PM 1:34
HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation/Termination or Suspension of Permits; Final Rule (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondents are the City of Marco Island, Florida (the City), and Quality Enterprises USA, Inc. (Quality).
2. Complainant and Respondents have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. Asbestos is a “hazardous air pollutant” as that term is defined in Sections 112(a)(6) and 112(b)(1) of the CAA, 42 U.S.C. §§ 7412(a)(6) and 7412(b)(1), 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. Any person who violates Section 112 of the CAA may be assessed a penalty of up to \$25,000 for each such violation, in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d). The statutory penalty of \$25,000 has been adjusted for inflation. For a violation occurring after January 31, 1997, and through March 15, 2004, a penalty of up to \$27,500 may be assessed. For a violation occurring after March 15, 2004, and through January 12, 2009, a penalty of up to \$32,500 may be assessed. For a violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed. Each day a violation continues may constitute a separate violation.
4. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d) is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A, last updated on August 4, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to the aforementioned delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Pamela McIlvaine
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9197.

III. EPA's Statement of Facts and Allegations of Violations

6. The City retained Quality as the general contractor to conduct the Collier Boulevard road-widening and sewer and drinking water pipe installation project (the Project) in the City of Marco Island, Florida.
7. EPA alleges that the sewer and drinking water pipelines owned by the City constitute a "facility component" as that term is defined in 40 C.F.R. §61.141.
8. "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.
9. An "owner or operator of a demolition or renovation activity" is defined at 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.
10. EPA alleges that Respondents are owners and operators of a renovation activity.
11. EPA alleges that between approximately March 2005 and March 2006, as a part of the implementation of the Project, a portion of the existing asbestos-containing cement piping was excavated and the remainder was abandoned in place and grouted. As a result of the handling of the excavated asbestos-containing cement piping, EPA alleges that a portion of it became "regulated asbestos containing material" (RACM) as that term is

defined in 40 C.F.R. § 61.141. EPA alleges that the excavation and disposal of RACM at various locations around the Project site qualifies the project as a renovation pursuant to the Asbestos NESHAP.

12. As a renovation project that involved the excavation, handling, and disposal of RACM, EPA alleges that the Project was subject to the notification and work practices requirements of the Asbestos NESHAP.
13. EPA alleges that Respondents failed to comply with the applicable Asbestos NESHAP requirements as follows:
 - a. Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(a) by failing to inspect the facility for the presence of asbestos prior to the initiation of renovation activities.
 - b. Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(b) by failing to provide written notice of intention to renovate the facility component prior to the initiation of renovation activities involving at least 260 linear feet of regulated asbestos-containing material (RACM) on a facility component.
 - c. Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(c)(1) by failing to remove all regulated asbestos-containing material (RACM) from a facility being renovated before any activity begins that would break up, dislodge, or similarly disturb the material.
 - d. Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(c)(6)(i) by failing to adequately wet all RACM including material that has been removed or stripped and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150.

- e. Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.145(c)(8) by failing to have an on-site representative trained in the provisions of 40 C.F.R. Part 61, Subpart M (the Asbestos NESHAP) and the means of complying with them.
- f. Respondents violated Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 61.150(b)(1) by failing to deposit all asbestos-containing waste material (ACWM) as soon as practical at a waste disposal site operated in accordance with the provisions of 40 C.F.R. § 61.154.

IV. Consent Agreement

- 14. For the purposes of this CAFO, Respondents admit the jurisdictional allegations set forth above and neither admit nor deny the factual allegations and allegations of violations, and the applicability of the Asbestos NESHAP to the Respondents' activities as set forth above in Paragraphs 6 through 13. Further, Respondents are entering into this CAFO to avoid the risk, time, and cost of litigation with EPA.
- 15. Respondents waive their right to a hearing on the allegations contained herein and their right to appeal the proposed Final Order accompanying the Consent Agreement.
- 16. Respondents consent to the assessment of the penalty proposed by EPA and agree that Quality shall pay the civil penalty as set forth in this CAFO, pursuant to a separate agreement between the Respondents.
- 17. Respondents certify that as of the date of their execution of this CAFO, they are in compliance with all relevant requirements of the Asbestos NESHAP.
- 18. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, for the specific violations alleged herein. Except as

specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards.

Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the Respondents' responsibility to comply with said laws and regulations.

19. Complainant and Respondents agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

V. Final Order

20. Respondents are assessed a civil penalty of Eighty-One Thousand, Seven Hundred and Seventy-Two Dollars (\$81,772.00) which shall be paid by Quality, pursuant to a separate agreement between the Respondents, within 30 days from the effective date of this CAFO. In the event that Quality fails to pay the penalty as required in this CAFO, the City shall pay the penalty within 60 days after receipt of a written demand for payment from EPA. If the penalty is not paid by either party as required by this CAFO, EPA reserves its rights to initiate action pursuant to Section 113(d) of the CAA against one or both parties to assess penalties for violations of the asbestos NESHAP.
21. Payment of the penalty shall be remitted by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check to the following address by U.S. Postal Service:

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

The check shall reference on its face the name of the Respondents and Docket Number of this CAFO.

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.) use the following address:

U. S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson (314) 418-4087.

22. At the time of payment, Respondents shall send a copy of the check and a written statement that payment has been made in accordance with this CAFO, to each of the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960,

Pamela McIlvaine
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960,

and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

23. For the purposes of state and federal income taxation, Respondents shall not be entitled, and agree not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by a Respondent to deduct any such payments shall

constitute a violation of this CAFO by the Respondent attempting such a deduction.

24. 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. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
25. Complainant and Respondents shall bear their own costs and attorney fees in this matter.
26. This CAFO shall be binding upon the Respondents, their successors and assigns.
27. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party each represents to enter into this CAFO and legally bind their respective party to this CAFO.

VI. Effective Date

28. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Docket No.: CAA-04-2010-1531(b)

Respondent: City of Marco Island

By:  (Signature) Date: 6/9/10

Name: James E. Riviere (Typed or Printed)

Title: Interim City Manager (Typed or Printed)

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: City of Marco Island, Florida and Quality Enterprises USA, Inc. Docket Number: CAA-04-2010-1531(b), to the addressees listed below.

Dr. James Riviere
City Manager
City of Marco Island
50 Bald Eagle Drive
Marco Island, Florida 34145

(via Certified Mail, Return Receipt Requested)

Mr. Alan Gabriel
City Attorney
City of Marco Island
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33301

Mr. Howard J. Murrell, Jr.
President
Quality Enterprises USA, Inc.
3894 Mannix Drive, Suite 216
Naples, Florida 34114-5406

(via Certified Mail, Return Receipt Requested)

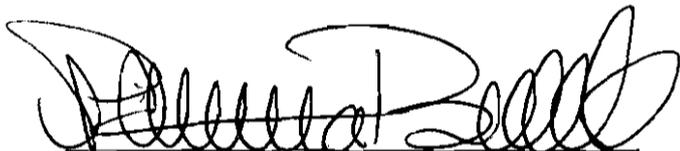
Pamela McIlvaine
Chemical Products & Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Robert Caplan, Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(via EPA's internal mail)

Date: 6-23-10



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 6/14/10 (Name) (Date)

in the Region 4, ORC, OEA (Office) at (404) 562-9504 (Telephone Number)

Non-SF Judicial Order/Consent Decree USAO COLLECTS

Administrative Order/Consent Agreement FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree DOJ COLLECTS

Oversight Billing - Cost Package required: Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: City of Marco Island, FL & Quality Enterprises USA Inc. (Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 81,772 (If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 04 2010-1531 (6)

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office:

The IFMS Accounts Receivable Control Number is: Date

If you have any questions, please call: of the Financial Management Section at:

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- 1. Debt Tracking Officer Environmental Enforcement Section Department of Justice RM 1647 P.O. Box 7611, Benjamin Franklin Station Washington, D.C. 20044
2. Originating Office (EAD)
3. Designated Program Office

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- 1. Originating Office
2. Regional Hearing Clerk
3. Designated Program Office
4. Regional Counsel (EAD)