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1 NANCY J. MARVEL  
Regional Counsel

2011 JUN 14 AM 10:34

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Region IX  
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5 San Francisco, CA 94105  
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U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGIONAL OFFICE IX

7 UNITED STATES  
8 ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
9 75 HAWTHORNE STREET  
SAN FRANCISCO, CA 94105

10 ) Docket No. CAA-09-2010-0007  
11 IN THE MATTER OF: )  
12 El Centro Redevelopment Agency ) CONSENT AGREEMENT  
and Duggins Construction, ) AND FINAL ORDER  
13 Respondents. )  
14 \_\_\_\_\_ )

15 I. CONSENT AGREEMENT

16 Complainant, the Director of the Air Division, United  
17 States Environmental Protection Agency, Region IX, ("EPA") and  
18 Respondents, El Centro Redevelopment Agency and Duggins  
19 Construction, seek to settle this case initiated against  
20 Respondents under the Clean Air Act ("CAA"), as amended, 42  
21 U.S.C. §§7401-7671q, and consent to the entry of this Consent  
22 Agreement and Final Order ("CAFO").

23 A. AUTHORITY

24 1. EPA initiated this civil administrative proceeding  
25 for the assessment of a civil penalty under the CAA pursuant to  
26 Section 113(d) of the CAA, 42 U.S.C. § 7413(d), by issuing a  
27 Complaint and Notice of Opportunity for Hearing ("Complaint")  
28

1 against Respondents on September 28, 2010, in accordance with  
2 the Consolidated Rules of Practice Governing the Administrative  
3 Assessment of Civil Penalties and the Revocation/Termination or  
4 Suspension of Permits at 40 C.F.R. Part 22.

5 2. The Complaint alleges that Respondents violated the  
6 CAA and implementing regulations known as the National Emission  
7 Standards for Hazardous Air Pollutants for asbestos at 40  
8 C.F.R. Part 61, Subpart M by failing to provide EPA with a  
9 written notification of intention to demolish before demolition  
10 began.

11 3. EPA and Respondents have agreed to resolve this civil  
12 administrative proceeding by executing this CAFO pursuant to 40  
13 C.F.R. § 22.18(b).

14 B. RESPONDENTS' ADMISSIONS

15 4. In accordance with 40 C.F.R. § 22.18(b)(2) and for  
16 the purpose of this proceeding, Respondents (i) admit that EPA  
17 has jurisdiction over the subject matter of this CAFO and over  
18 Respondents; (ii) neither admit nor deny the specific factual  
19 allegations contained in the Complaint; (iii) consent to any  
20 and all conditions specified in this CAFO and to the assessment  
21 of the civil administrative penalty under Section C of this  
22 CAFO; (iv) waive any right to contest the allegations contained  
23 in the Complaint; and (v) waive the right to appeal the  
24 proposed final order contained in this CAFO.

25 ///

1                                    C. CIVIL ADMINISTRATIVE PENALTY

2            5.    Respondents agree to the assessment of a penalty in  
3 the amount of SIXTEEN THOUSAND, EIGHT HUNDRED AND SEVENTY  
4 DOLLARS (\$16,870) as final settlement of the civil claims  
5 against Respondents arising under the CAA, as alleged in the  
6 Complaint.

7            6.    Respondents shall pay the assessed penalty no later  
8 than thirty (30) days after the effective date of the CAFO.  
9 The assessed penalty shall be paid by **certified or cashier's**  
10 **check**, payable to "Treasurer, United States of America," or  
11 paid by one of the other methods listed below and sent as  
12 follows:

13 Regular Mail:  
14 U.S. Environmental Protection Agency  
15 Fines and Penalties  
16 Cincinnati Finance Center  
17 PO Box 979077  
18 St. Louis, MO 63197-9000

19 Wire Transfers:  
20 Wire transfers must be sent directly to the Federal Reserve  
21 Bank in New York City with the following information:  
22 Federal Reserve Bank of New York  
23 ABA = 021030004  
24 Account = 68010727  
25 SWIFT address = FRNYUS33  
26 33 Liberty Street  
27 New York, NY 10045  
28 Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

29 Overnight Mail:  
30 U.S. Bank  
31 1005 Convention Plaza  
32 Mail Station SL-MO-C2GL

33 In the Matter of El Centro Redevelopment  
34 Agency and Duggins Construction,  
35 Docket No. CAA-09-2010-0007

1 ATTN Box 979077  
2 St. Louis, MO 63101

3 ACH (also known as REX or remittance express):

4 Automated Clearinghouse (ACH) for receiving US currency  
5 PNC Bank  
6 808 17th Street, NW  
7 Washington, DC 20074  
8 ABA = 051036706  
9 Transaction Code 22 - checking  
10 Environmental Protection Agency  
11 Account 31006  
12 CTX Format

13 On Line Payment:

14 This payment option can be accessed from the information below:

15 www.pay.gov  
16 Enter "sf01.1" in the search field  
17 Open form and complete required fields

18 If clarification regarding a particular method of payment  
19 remittance is needed, contact the EPA Cincinnati Finance Center  
20 at 513-487-2091.

21 In addition, a copy of each check or notification that the  
22 payment has been made by one of the other methods listed above,  
23 including proof of the date payment was made, shall be sent  
24 with a transmittal letter indicating Respondents' names, the  
25 case title, and the docket number to: and mailed to:

- 26
- 27 a) Regional Hearing Clerk (ORC-1)  
28 Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105
  - b) Chief, Air Enforcement Office (AIR-5)  
Air Division  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105
  - c) Carol Bussey  
Assistant Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105

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1           7.     Payment of the above civil administrative penalty  
2 shall not be used by Respondents or any other person as a tax  
3 deduction from Respondents' federal, state, or local taxes.

4           8.     If Respondents fail to pay the assessed civil  
5 administrative penalty specified in Paragraph 5 by the deadline  
6 specified in Paragraph 6 of this CAFO, Respondents shall pay to  
7 EPA the stipulated penalty of TWENTY-FOUR THOUSAND, ONE HUNDRED  
8 DOLLARS (\$24,100) rather than the assessed penalty of SIXTEEN  
9 THOUSAND, EIGHT HUNDRED AND SEVENTY (\$16,870), which shall  
10 become due and payable upon EPA's written request. Such  
11 failure by Respondents may also subject Respondents to a civil  
12 action to collect any unpaid portion of the assessed penalty,  
13 together with interest, handling charges, and nonpayment  
14 penalties as set forth in Paragraph 9 below. In any such  
15 collection action, the validity, amount, and appropriateness of  
16 this CAFO or the penalty assessed hereunder are not subject to  
17 review.

18           9.     Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C.  
19 § 3731, Respondent shall pay the following amounts:

20           a.     Interest: Any unpaid portion of the assessed penalty  
21 shall bear interest at the rate established pursuant to 26  
22 U.S.C. § 6621(a)(2) from the effective date of this CAFO,  
23 provided, however, that no interest shall be payable on any  
24 portion of the assessed penalty that is paid within thirty (30)  
25 days of the effective date of this CAFO.

1           b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1),  
2 a monthly handling charge of \$15 shall be paid for any month in  
3 which any portion of the assessed penalties is more than 30  
4 days past due.

5           c. Attorney Fees, Collection Costs, Nonpayment Penalty:  
6 Pursuant to 42 U.S.C. § 7413(d)(5), if Respondents fail to pay  
7 on a timely basis the full amount of the assessed penalty,  
8 interest, and handling charges, they shall be liable for the  
9 United States' enforcement and collection expenses, including,  
10 but not limited to, attorney fees and costs incurred by the  
11 United States for collection proceedings, and a quarterly  
12 nonpayment penalty for each quarter during which such failure  
13 to pay persists. Such nonpayment penalty shall be ten percent  
14 (10%) of the aggregate amount of Respondents' outstanding or  
15 overdue penalties and nonpayment penalties accrued from the  
16 beginning of such quarter.

17                                   D. RETENTION OF RIGHTS

18           10. In accordance with 40 C.F.R. § 22.18(c), this CAFO  
19 only resolves Respondents' liability for federal civil  
20 penalties for the violation and facts specifically alleged in  
21 the Complaint. Nothing in this CAFO is intended to or shall be  
22 construed to resolve (i) any civil liability for violations of  
23 any provision of any federal, state, or local law, statute,  
24 regulation, rule, ordinance, or permit not specifically alleged  
25 in the Complaint; or (ii) any criminal liability. EPA  
26

1 specifically reserves any and all authorities, rights, and  
2 remedies available to it (including, but not limited to,  
3 injunctive or other equitable relief or criminal sanctions) to  
4 address any violation of this CAFO or any violation not  
5 specifically alleged in the Complaint.

6 11. This CAFO does not exempt, relieve, modify, or affect  
7 in any way Respondents' duty to comply with all applicable  
8 federal, state, and local laws, regulations, rules, ordinances,  
9 and permits.

10 E. ATTORNEYS' FEES AND COSTS

11 12. Except as set forth in Paragraph 9(c) above, each  
12 party shall bear its own costs, fees, and disbursements  
13 incurred in this action.

14 F. EFFECTIVE DATE

15 13. In accordance with 40 C.F.R. §§ 22.18(b)(3) and  
16 22.31(b), this CAFO shall be effective on the date that the  
17 final order contained in this CAFO, having been approved and  
18 issued by either the Regional Judicial Officer or Regional  
19 Administrator, is filed.

20 G. BINDING EFFECT

21 14. The undersigned representative of Complainant and  
22 the undersigned representatives of Respondents each certifies  
23 that he or she is fully authorized to enter into the terms and  
24 conditions of this CAFO and to bind the party he or she  
25 represents to this CAFO.

1           15. This Consent Agreement constitutes the entire  
2 agreement between the parties resolving this matter arising  
3 under the CAA.

4           16. The provisions of this CAFO shall be binding on  
5 Respondents and their officers, directors, employees, agents,  
6 servants, authorized representatives, successors, and assigns.

7           17. This document constitutes an "enforcement response"  
8 as that term is used in EPA's Penalty Policy for the purposes  
9 of determining Respondents' "full compliance history" as  
10 provided in Section 113(e) of the Act, 42 U.S.C. § 7413(e).

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27       In the Matter of El Centro Redevelopment  
28       Agency and Duggins Construction,  
       Docket No. CAA-09-2010-0007

1 FOR RESPONDENT, EL CENTRO REDEVELOPMENT AGENCY

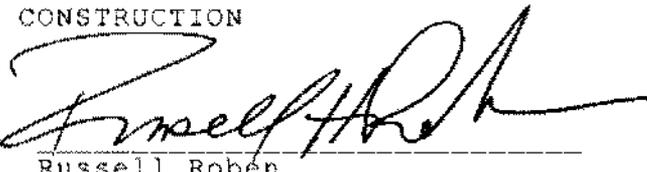
2  
3 Date: 12/10/10 By:   
4 Ruben Duran  
5 Executive Director  
6 EL CENTRO REDEVELOPMENT AGENCY  
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27 In the Matter of El Centro Redevelopment  
Agency and Duggins Construction,  
28 Docket No. CAA-09-2010-0007

1 FOR RESPONDENT, DUGGINS CONSTRUCTION

2  
3 Date: 12/8/10

4 By:



5 Russell Roben  
6 Vice-President  
7 DUGGINS CONSTRUCTION

1 FOR COMPLAINANT, EPA REGION IX  
2

3 Date: 1/10/2011 BY:

  
4 \_\_\_\_\_  
5 Deborah Jordan  
6 Director, Air Division  
7 U.S. ENVIRONMENTAL PROTECTION  
8 AGENCY, REGION IX  
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27 In the Matter of El Centro Redevelopment  
Agency and Duggins Construction,  
28 Docket No. CAA-09-2010-0007

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2 II. FINAL ORDER

3 Complainant and Respondents, having entered into the  
4 foregoing Consent Agreement,

5 IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-  
6 2010-0007) be entered, and that Respondents shall pay a civil  
7 administrative penalty in the amount of SIXTEEN THOUSAND, EIGHT  
8 HUNDRED AND SEVENTY DOLLARS (\$16,870) and comply with the terms  
9 and conditions set forth in the Consent Agreement.

10 01/13/11  
11 DATE

12   
13 STEVEN L. JAWGIEL  
14 Regional Judicial Officer  
15 U.S. Environmental Protection  
16 Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original copy of the foregoing Consent Agreement and Final Order for The El Centro Redevelopment Agency and Duggins Construction, Inc. was filed with the Regional Hearing Clerk, Region IX and that a copy was sent by U.S. Certified Mail, Return Receipt Requested, to:

Ruben Duran  
Executive Director  
El Centro Redevelopment Agency  
1275 Main Street  
El Centro, CA 92243

Certified Mail No. 7009 2820 0001 8697 3730

James L. Duggins  
Duggins Construction, Inc.  
341 West Crown Court  
Imperial, CA 92251

Certified Mail No. 7009 2820 0001 8697 3723

Date: 01/14/11

  
\_\_\_\_\_

for: Regional Hearing Clerk