

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN RE: :
 :
Delaware Valley Remediation :
132 Rock Hill Road :
Bala Cynwyd, PA 19004 : **DOCKET NO.: CAA-03-2009-0177**
 :
 :
RESPONDENT :

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant"), and Delaware Valley Remediation, ("Respondent."), and filed along with the attached Final Order pursuant to Section 113 of the Clean Air Act (the "Act"), 42 U.S.C. § 7413 and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, (the "Consolidated Rules of Practice"). The Consolidated Rules of Practice, at 40 C.F.R. § 22.13 provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This Consent Agreement, and the accompanying Final Order, address alleged violations by Respondent of Section 112 of the Clean Air Act, 42 U.S.C. § 7412 ("CAA" or the "Act") and regulations promulgated thereunder at 40 C.F.R. Part 61, Subpart M, the National Emission Standards for Hazardous Air Pollutants for Asbestos ("Asbestos NESHAP").

II. GENERAL PROVISIONS

2. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement.
3. Except as provided in Paragraph 2 above, Respondent neither admits nor denies the specific factual allegations and the conclusions of law set forth in this Consent Agreement and the attached Final Order.

4. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO"), the issuance of the accompanying Final Order, or the enforcement of the CAFO.
5. Respondent consents to the issuance of the accompanying Final Order, and to the terms and conditions set forth therein, and consents to the payment of a civil penalty as set forth in this CAFO.
6. Respondent agrees to pay its own costs and attorney fees.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. In accordance with 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law:
 - A. Respondent, Delaware Valley Remediation, is a corporation incorporated in the Commonwealth of Pennsylvania with a primary business address of 132 Rock Hill Road in Bala Cynwyd, Pennsylvania, and is a contractor specializing in asbestos abatement.
 - B. Respondent is a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).
 - C. Pursuant to 40 C.F.R. § 61.141 "facility" means "any institutional, commercial, public, industrial, or residential structure, installation, or building...". The Concord Township building located at 43 Thornton Road in Concord, Pennsylvania, is a facility within the meaning of 40 C.F.R. § 61.141.
 - D. Pursuant to 40 C.F.R. § 61.141 "Regulated Asbestos-Containing Material ('RACM') means (a) friable asbestos material, (b) Category I nonfriable asbestos containing material ('ACM') that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations."
 - E. Pursuant to 40 C.F.R. § 61.141 "remove" means to take out any RACM or facility components that contain or are covered with RACM from any facility.
 - F. Pursuant to 40 C.F.R. § 61.141 "renovation" means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component.

- G. Pursuant to 40 C.F.R. § 61.141 "owner or operator of a demolition or renovation activity" means 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.
- H. Respondent, at the time of the renovation operations for the Concord Township building, which occurred from September to October of 2008, was the "operator" as the term is defined by 40 C.F.R. § 61.141.
- I. 40 C.F.R. § 61.145(b) provides, in pertinent part, that each owner or operator of a demolition or renovation activity to which this section applies shall: (1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable. (2) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent. (3) Postmark or deliver the notice...(i) at least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material).
- J. EPA received no notification of an asbestos renovation project at the Concord Township building, which occurred from September to October of 2008. The project involved the removal of asbestos-containing materials.
- K. According to an inspection conducted on November 18, 2008, at the Concord Township building location, no notification was found posted onsite in reference to any demolition or renovation activities taking place.
- L. Since Respondent did not submit an asbestos project notification for the 2008 Concord Township building renovation activity to EPA, Respondent violated the notification requirements of 40 C.F.R. § 61.145(b).

IV. SETTLEMENT RECITATION

Compliance

- 8. Respondent herein certifies to Complainant and to EPA that, upon investigation, to the best of its knowledge and belief, it presently is in compliance with the provisions of the Act, and the regulations promulgated thereunder, that are referenced in this Consent Agreement and that all violations alleged in the Consent Agreement have been remedied.

Civil Penalty

- 9. In settlement of the allegations enumerated above, Respondent agrees to pay a civil penalty amount of one thousand five hundred dollars (\$1,500.00) in full satisfaction of the claim alleged in this consent agreement. The aforesaid settlement amount is based

upon Complainant's consideration of a number of factors, including, but not limited to, Section 113, 42 U.S.C. § 7413 penalty assessment criteria, including the seriousness of Respondent's violation and Respondent's good faith efforts to comply as provided in the Clean Air Act Stationary Source Civil Penalty Policy, Appendix III, and the Asbestos NESHAP, as set forth at 40 C.F.R. Part 61, Subpart M. Such payment shall be made by Respondent no later than thirty (30) days after the effective date of the accompanying Final Order.

10. Payment of the civil penalty amount required under the terms of Paragraph 9, above, shall be made as follows:

A. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashiers 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 cashiers 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. 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)

D. 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

E. 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-03-2009-0177. At the same time that any payment is made, Respondent 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 Kyla Townsend-McIntyre (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

11. The Respondent agrees not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

Reservation of Rights

12. This Consent Agreement and the attached Final Order only resolve the claim which is alleged in Paragraph 7, above. Nothing herein shall be construed to limit the authority of the EPA to undertake action against any person, including Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nor shall anything in this Consent Agreement and the attached Final Order be construed to limit the United States' authority to pursue criminal sanctions.
13. EPA reserves any rights and remedies available to it to enforce the provisions of this Consent Agreement, the Act and its implementing provisions, and of any other federal laws or regulations for which it has jurisdiction, following the entry of this Consent Agreement.

Waiver of Hearing

14. For the purposes of this proceeding only, the Respondent hereby expressly waives its right to a hearing pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), concerning the finality or validity of this CAFO, or with respect to any issue of law or fact set forth in this CAFO. Respondent also waives its rights to appeal the accompanying Final Order.

Effective Date

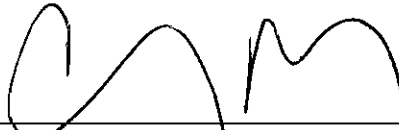
15. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk, U.S. EPA, Region III.

The undersigned representative of the Respondent certifies that they are fully authorized to execute this Consent Agreement and to legally bind the party they represent.

For Respondent

8/17/09
Date

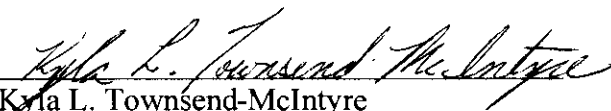
Delaware Valley Remediation:



Casey Duffy, President
Delaware Valley Remediation

For Complainant:


08/18/2009
Date



Kyla L. Townsend-McIntyre
Asbestos Enforcement Officer
U.S. Environmental Protection Agency, Region III

Accordingly, the Land and Chemicals Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, ratify this Consent Agreement and issue the accompanying Final Order. The amount of the recommended civil penalty assessment is one thousand five hundred dollars (\$1,500.00).

8/25/09
Date



Abraham Ferdas, Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region III

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REGION III
1650 Arch Street
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IN RE:	:	
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Delaware Valley Remediation	:	Docket No. CAA-03-2009-0177
132 Rock Hill Road	:	
Bala Cynwyd, PA 19004	:	Final Order
	:	
Respondent	:	

FINAL ORDER

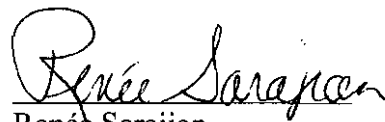
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Delaware Valley Remediation, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of 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 Section 113 of the Clean Air Act, *as amended*, 42 U.S.C. § 7413 ("CAA"), and the Consolidated Rules of Practice, and having determined, based on the representations of the parties in the attached Consent Agreement, that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section

113 of CAA, 42 U.S.C. § 7413, Respondent is assessed a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00).

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.

9/3/09
Date



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



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CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order for the above-referenced matter were hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed via certified mail, return receipt requested, postage prepaid, to the following person:

Casey Duffy, President
Delaware Valley Remediation
132 Rock Hill Road
Bala Cynwyd, PA 19004

09/03/2009
Date

Kyla L. Townsend-McIntyre

Enforcement Officer
U.S. Environmental Protection Agency, Region III