



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

Via Certified Mail

Benjamin M. Cohan
Office of Regional Counsel
(215) 814-2618 (tel.)
(215) 814-2603 (fax)

June 30, 2010


James Mulligan, Esq.
321 Spruce Street
Suite 300
Scranton, PA 18503

Re: Wilkes-Barre Township et.al.
EPA Docket No. CAA-03-2010-0074

Dear Jim:

Enclosed you will find a true and correct copy of the executed settlement in the above captioned matter, which was filed with the Regional Hearing Clerk today, June 30, 2010. Please note that the enclosed settlement is effective on this date, and that your clients' respective payment obligations are to be found in Section IV of the enclosed Consent Agreement. If you have any questions regarding compliance with the terms of the Consent Agreement, please call me.

Sincerely,


Benjamin M. Cohan
Senior Assistant Regional Counsel

Enclosures
cc: Rich Ponak(3LC32)

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

OFFICE OF
GENERAL COUNSEL
EPA
PHILADELPHIA, PA

IN RE:

Wilkes-Barre Township :
150 Watson Street (Front) :
Wilkes-Barre, PA 18702 :

and :
:

Stillwater Environmental Services, Inc. :
P.O. Box 18 :
Forrest City, PA 18421 :

Respondents :
:

Former Belt and Buckle Factory :
861 Shannon Street :
Wilkes Barre, PA 18702 :

Facility :
:

Docket No. CAA-03-2010-0074

CONSENT AGREEMENT WITH STILLWATER ENVIRONMENTAL SERVICES, INC.

WHEREAS, this Consent Agreement pertains exclusively to settlement of Respondent Stillwater Environmental Services, Inc.'s liability as set forth herein; and

WHEREAS, EPA and Respondent Wilkes-Barre Township have already entered into a separate Consent Agreement with respect to the above captioned matter (Complaint Docket No. CAA-03-2010-0074);

I. Preliminary Statement

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III (“EPA” or “Complainant”), and Stillwater Environmental Services (“Respondent”), pursuant to Section 113 of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), set forth at 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §22.18(b)(2) and (3)).
2. The violations cited herein pertain to the Respondent’s alleged failure to comply with Section 112 of the CAA, 42 U.S.C. § 7412, and certain implementing regulations found at 40 C.F.R. Part 61, Subpart M, the National Emission Standards for Asbestos (the “Asbestos NESHAP”).
3. In accordance with Section 22.18(b)(2) and (3) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(b)(2) and (3), Complainant hereby resolves, as part of the settlement set forth herein, the claims identified in this Consent Agreement with respect to Respondent Stillwater Environmental Services, Inc.

II. General Provisions

4. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the accompanying Final Order (collectively “this CAFO”).
5. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 4, above.

6. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CAFO, the issuance of the accompanying Final Order, or the enforcement of the CAFO.

7. For the purpose of this proceeding only, Respondent hereby expressly waives its right to a hearing pursuant to section 113(d)(2)(A) of the CAA, 42 U.S.C. § 113(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. The Respondent also waives any right to appeal the accompanying Final Order.

8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.

III. Findings of Fact and Conclusions of Law

9. Paragraphs 2 - 34 of the Administrative Complaint and Notice of Opportunity for Hearing ("Complaint"), filed with the Regional Hearing Clerk on January 6, 2010, are hereby incorporated by reference in this CAFO. The subject paragraphs set forth the factual and legal allegations made by EPA which constitute the basis of the claims being settled and resolved in this CAFO with respect to Respondent Stillwater Environmental Services, Inc.

IV. Settlement Recitation, Settlement Conditions and Civil Penalty

10. EPA and Respondent enter into this Consent Agreement and the attached Final Order in order to fully settle and resolve all allegations set forth in Section III, "Findings of Fact and Conclusions of Law" above, and all claims for civil penalties pursuant thereto.

11. In settlement of the alleged violations set forth in Paragraph 9 above, Respondent hereby consents to the assessment and payment of a civil penalty in the amount of six thousand, two hundred and fifty dollars (\$6,250), pursuant to Section 113(d) of the CAA, 42 U.S.C. §113(d), and in accordance with the payment terms set forth below. Respondent further consents to the issuance of the attached Final Order.

12. Pursuant to Section 113(e) of the CAA, 42 U.S.C. §113(e), EPA has considered the statutory penalty factors set forth therein (which include the size of the business, good faith efforts to comply, the duration of the violation as established by any credible evidence, history of prior violations by the Respondents, the degree of culpability, and such other matters as justice may require). EPA has determined that Respondent's payment of the civil penalty and any applicable interest shall constitute full and final satisfaction of the violations set forth in Paragraph 9 of this CAFO.

13. Payment of the six thousand, two hundred and fifty dollars (\$6,250) civil penalty required under Paragraph 11, above, may be paid in five (5) installments with interest at the rate of 1% per annum on the outstanding principal balance in accordance with the following schedule:

- a. 1st Payment: The first payment in the amount of two thousand, two hundred and fifty dollars (\$2,250), consisting of a principal payment of \$2,250 and an interest payment of \$0.00, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand delivered to Respondent;
- b. 2nd Payment: The second payment in the amount of one thousand and nine dollars and eighty-six cents (\$1,009.86), consisting of a principal payment of \$1,000

and an interest payment of \$9.86, shall be paid within ninety (90) days of the date on which this CAFO is mailed or hand-delivered to Respondent;

c. 3rd Payment: The third payment in the amount of one thousand dollars and nine dollars and eighty-six cents (\$1,009.86), consisting of a principal payment of \$1,000 and an interest payment of \$9.86, shall be paid within one hundred and twenty (120) days of the date on which this CAFO is mailed or hand-delivered to Respondent;

d. 4th Payment: The fourth payment in the amount of one thousand and eight dollars and twenty-two cents (\$1,008.22), consisting of a principal payment of \$1,000 and an interest payment of \$8.22, shall be paid within one hundred and fifty (150) days of the date on which this CAFO is mailed or hand-delivered to Respondent;

e. 5th Payment: The fifth payment in the amount of one thousand and four dollars and ninety-three cents (\$1,004.93), consisting of a principal payment of \$1,000 and an interest payment of \$4.93, shall be paid within one hundred and eighty (180) days of the date on which this CAFO is mailed or hand-delivered to Respondent;

Pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of six thousand two hundred and fifty dollars (\$6,250) and total interest payments in the amount of thirty two dollars and eighty-eight cents (\$32.88).

14. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 13, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraphs 19, 20 and 21, below, in the event of any such failure or default.

15. Notwithstanding Respondent's agreement to pay the assessed civil penalty and applicable interest in accordance with the installment schedule set forth in Paragraph 13, above, Respondent may pay the entire civil penalty of six thousand two hundred and fifty dollars (\$6,250) within thirty (30) calendar days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a) as described in Paragraph 19, below. In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

16. Respondent shall remit each installment payment for the civil penalty and interest, pursuant to Paragraph 13, above, and/or the full penalty, pursuant to Paragraphs 14 or 15, above, and/or any administrative fees and late payment penalties, in accordance with

Paragraphs 19, 20 and 21, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by the Respondent shall include Respondent's full name and address and the EPA docket Number of this Consent Agreement (CAA-03-2010-0074).

b. All checks shall be made payable to "United States Treasury";

c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Eric Volck 513-487-2105

d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: 314-418-1028

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

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

- f. All payments by electronic funds transfer (“EFT”) shall be directed to:

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

Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency”

- g. All payments made through the automatic clearing house (“ACH”), also known as Remittance Express (“REX”), shall be directed to:

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

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: Jesse White @ 301-887-6548 or REX @ 1-866-234-5681

- h. On-line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter “sfo 1.1” in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

17. At the time of payment, Respondent shall send notices of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to each of the following persons:

Lydia Guy
Regional Hearing Clerk
U.S. EPA
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Benjamin M. Cohan
Sr. Assistant Regional Counsel
U.S. EPA
Region III (Mail Code 3RC11)
1650 Arch Street
Philadelphia, PA 19103-2029

18. 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 the outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified in this CAFO shall result in the assessment of late payment charges including additional interest, penalties, and/or administrative costs of handling delinquent debts.
19. 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. 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).

20. The costs 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 Directive - 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 any payment is due and an additional \$15.00 for each subsequent thirty (30) days any penalty payment remains unpaid.

21. A late payment 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 after any scheduled payment. 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).

22. Each party to this action agrees to pay its own costs and attorney fees. Respondent agrees that it will not seek costs and attorneys fees from the EPA or the federal government, and EPA agrees that it will not seek costs and attorneys fees from the Respondent.

23. The Respondent agrees not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to, this Consent Agreement and the attached Final Order.

V. EFFECT OF SETTLEMENT

24. Payment of the penalty specified in Paragraph 11, above, in the manner set forth in Section IV, above, and payment of any applicable interest, handling costs and/or late payment charges, as set forth in Section IV, above, shall constitute full and final satisfaction of all civil claims for penalties for the specific violations alleged in Paragraph 9 above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations. Except as set forth in this Section V or in Section IV above, nothing in this CAFO shall relieve Respondent of any duties or obligations otherwise imposed upon its by applicable federal, state or local laws and/or regulations.

VI. RESERVATION OF RIGHTS

25. This CAFO shall resolve only those civil claims which are alleged in Paragraph 9 above. Nothing in this CAFO shall be construed to limit the authority of the EPA and/or the United States to undertake action against any person, including Respondent, in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to the public health, welfare or the environment. In addition, this settlement is subject to all the 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. Nothing in this CAFO shall be construed to limit the United States' authority to pursue criminal sanctions. Furthermore, Complainant

reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations of which Complainant has jurisdiction, to enforce the provisions of this CAFO following entry of this CAFO.

VII. PARTIES BOUND

26. This CAFO shall apply to and be binding upon the EPA and the Respondent. By his or her signature below, the person signing this CAFO on behalf of each Respondent is acknowledging and certifying that he or she is fully authorized to enter into this CAFO and to legally bind the respective Respondent to the terms and conditions of this CAFO.

VIII. EFFECTIVE DATE

27. 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 of U.S. EPA - Region III.

IX. ENTIRE AGREEMENT

28. 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 in this CAFO.

FOR THE RESPONDENT
Stillwater Environmental Services Inc.

Shirley Bay
Name:
Title: *SECRETARY*

5-4-10
Date

**FOR THE COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION III**

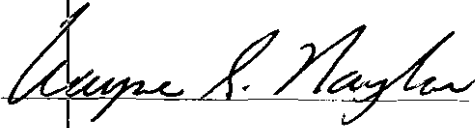


Benjamin M. Cohan
Assistant Regional Counsel
U.S. EPA, Region III

Date

6/23/10

The Land and Chemicals Division, United States Environmental Protection Agency -
Region III, recommends that the Regional Administrator of U.S. EPA Region III, or his designee,
issue the accompanying Final Order.



for

Abraham Ferdas, Director
Land and Chemicals Division

Date

6/25/10

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN RE:

Wilkes-Barre Township
150 Watson Street (Front)
Wilkes-Barre, PA 18702

and

Stillwater Environmental Services, Inc.
P.O. Box 18
Forrest City, PA 18421

Respondents

Former Belt and Buckle Factory
861 Shannon Street
Wilkes Barre, PA 18702

Facility

Docket No. CAA-03-2010-0074

FINAL ORDER

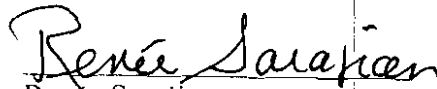
The undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

NOW THEREFORE, pursuant to 40 C.F.R. Part 22 and Section 113 of the Clean Air Act ("CAA"), as amended, 42 U.S.C. §7413, it is hereby ordered that Stillwater Environmental Services, Inc. ("Respondent"), pay a civil penalty in the amount of six thousand, two hundred and fifty dollars (\$6,250) plus any applicable interest. Payment of the aforesaid civil penalty shall be made in accordance with the payment schedule set forth in Section IV of the Consent Agreement. Respondent's payment of the civil penalty shall constitute full and final satisfaction of the violations set forth in Paragraph 9 of the foregoing Consent Agreement.

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

Date:

6/30/10



Renee Sarajian
Regional Judicial Officer
U.S. EPA, Region III

CERTIFICATE OF SERVICE

RECEIVED
JUL 1 2010
PHILADELPHIA, PA

IN RE:

Wilkes-Barre Township
150 Watson Street (Front)
Wilkes-Barre, PA 18702

and

Stillwater Environmental Services, Inc.
P.O. Box 18
Forrest City, PA 18421

Respondents

Former Belt and Buckle Factory
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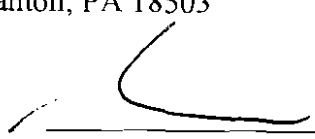
Docket No. CAA-03-2010-0074

I, the undersigned, hereby certify that, on the date provided below, the original and one true and correct copy of the foregoing Consent Agreement and Final Order were hand-delivered to and filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, PA, and that a true and correct copy was served via Certified Mail, Return Receipt Requested, upon the following persons:

James Mulligan, Esq.
321 Spruce Street
Suite 300
Scranton, PA 18503

Date:

6/30/10


Benjamin M. Cohan
Sr. Assistant Regional Counsel
U.S. EPA , Region III

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

SUBJECT: Partial Consent Agreement and Final Order Resolving Violations of the CAA (Asbestos NESHAP) in the Matter of Wilkes-Barre Township and Stillwater Environmental Services, Inc.
Docket No. CAA-03-2010-0074 – Settlement of Stillwater Environmental Services, Inc. liability

FROM: *for* Marcia E. Mulkey *Adriana Imbrioli*
Regional Counsel (3RC00)

and

for Abraham Fcrdas, Director *zn*
Land and Chemicals Division (3LC00)

TO: Renée Sarajian
Regional Judicial Officer (3RC00)

In accordance with 40 C.F.R. §§ 22.18(b)(2) and (3) of the Consolidated Rules of Practice, the attached Consent Agreement and Final Order (“CAFO”) resolves claims against Stillwater Environmental Services, Inc. (Respondent). Please note that the subject claims against Respondent Wilkes-Barre Township have already been resolved via a prior CAFO that was filed on April 27, 2010. The claims at issue allege violations of Section 112 of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. §7412, based on violations of regulations set forth at 40 C.F.R. Part 61, Subpart M (National Emission Standards for Hazardous Air Pollutants) (the “Asbestos NESHAP”). These allegations are fully described in Paragraphs 2-34 of the Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) issued on January 6, 2010, which is incorporated by reference and attached to the enclosed Consent Agreement. These allegations relate to Respondent’s failure to provide written notice of intent to demolish a building known as the former Belt and Buckle Factory, owned by Wilkes-Barre Township and located at 861 Shannon Street, Wilkes Barre, PA 18702 (“the Facility”) in accordance with section 61.145(b) of the Asbestos NESHAP.

The terms of the CAFO provide that the Respondent shall pay a civil penalty in the amount of six thousand, two hundred and fifty dollars (\$6,250) within a 6 month installment payment scheme. EPA calculated this penalty in accordance with Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and the Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991 (the “Policy”), and modifications thereto in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (“CMPIAR”), set forth at 40 C.F.R. Parts 19. In accordance with Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and in the process of calculating the proposed civil penalty, EPA considered, as appropriate, the size of the business, the economic impact of the penalty on the business, the violators’ full compliance history and good faith efforts to comply, the duration of the violation, payment by the violators of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the

violation.

We recommend that you sign the attached Final Order and return it to the Air Branch of the Office of Regional Counsel for further processing.

Attachment

cc: Samuel Sanguedolce, Esq. (Counsel to Wilkes Barre Township)
James Mulligan, Esq. (Counsel to Stillwater Environmental Services, Inc.)