

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Hugh W. Martinez 4/5/12
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CAA-01-2011-0031

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Thomas C. Michelson
1201 Waterbury Road
Stowe, VT 05672

Total Dollar Amount of Receivable \$ 500.⁰⁰ Due Date: 4/5/12

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1ST \$ _____ on _____

2nd \$ _____ on _____

3rd \$ _____ on _____

4th \$ _____ on _____

5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA REGION 1 - NEW ENGLAND
5 Post Office Square, Suite 100 (Mail Code OES 04-3)
Boston, MA 02109-3912

RECEIVED

2012 APR -5 A 10:40

OFFICE OF
ENVIRONMENTAL STEWARDSHIP
EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

HUGH W. MARTINEZ
Direct: 617-918-1867

BY HAND

April 4, 2012

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 – New England
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

Re: *In the Matter of Thomas C. Michelson*, Docket No. CAA-01-2011-0031; Approved
Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a Consent Agreement and Final Order (CAFO) to both initiate and resolve the above-referenced enforcement case. Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the CAFO and this cover letter were mailed to Respondent in the manner indicated.

Thank you for your assistance in this matter.

Sincerely,

Hugh W. Martinez, Senior Enforcement Counsel
Counsel for Complainant
U.S. EPA Region 1

Enclosures

cc: Thomas C. Michelson
Alexander Aman, Asbestos NESHP Enforcement Coordinator, EPA Region 1

RECEIVED

2012 APR -5 A 10:40

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK WS

_____)	
In the Matter of:)	
Thomas C. Michelson)	Docket No. CAA-01-2011-0031
1201 Waterbury Road)	
Stowe, VT 05672)	CONSENT AGREEMENT
)	AND FINAL ORDER
)	
Proceeding under Section 113 of the)	
Clean Air Act, 42 U.S.C. § 7413)	
_____)	

I. INTRODUCTION

The United States Environmental Protection Agency, Region 1 ("EPA"), as Complainant, and Thomas C. Michelson, as Respondent, enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO notifies Respondent that EPA intends to assess penalties for violation of Section 112 of the Clean Air Act ("Act" or "CAA"), 42 U.S.C. § 7412, and of regulations promulgated under Section 112, the National Emission Standard for Hazardous Air Pollutants for asbestos, 40 C.F.R. Part 61, Subpart M ("Asbestos NESHAP"), by Respondent. The CAFO also informs Respondent of his right to request a hearing.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 113(d) of the CAA, 42 U.S.C. § 7413(d). Complainant and Respondent (collectively, the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

Therefore, before any hearing or the taking of any testimony, without adjudication of any

issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

II. PRELIMINARY STATEMENT

1. Thomas C. Michelson is an individual who resides in Stowe, Vermont. Mr. Michelson owned the former Pines Motel located at 1203 Waterbury Road in Stowe, Vermont (the "Facility").

2. Respondent is a "person," as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

3. Section 113(d) of the Act provides authority for the assessment of penalties for violation of, among other things, regulations promulgated under Section 112 of the Act. The Administrator of EPA and the Attorney General for the U.S. Department of Justice have jointly determined that this action, which addresses certain violations that commenced more than 12 months ago, is an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

4. Pursuant to the Asbestos NESHAP, at 40 C.F.R. § 61.145(a), an *owner or operator of a demolition or renovation activity*¹ must, among other things, inspect the affected *facility* or part of the facility where the *demolition* or *renovation* operation will occur for the presence of *asbestos*. Pursuant to 40 C.F.R. §§ 61.145(a)(2) and 61.145(b), for scheduled demolitions, including those where no *regulated asbestos-containing material (RACM)* is believed to be present, owners or operators must provide EPA with prior written notice of

¹ Words that appear in italics upon first use herein indicate terms defined in the Asbestos NESHAP and are intended to be used as defined therein, at 40 C.F.R. § 61.141 .

intention to demolish at least 10 *working days* before work begins, in the manner specified by 40 C.F.R. § 61.145(b).

5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. For purposes of this proceeding, Respondent waives any defenses he might have as to jurisdiction and venue and, without admitting or denying EPA's factual findings or allegations of violation herein, consents to the terms of this CAFO.

6. Respondent acknowledges that he has been informed of the right to request a hearing and hereby waives his right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives his right to appeal the Final Order accompanying the Consent Agreement.

7. By signing this CAFO, Respondent certifies that he is presently operating in compliance with Section 112 of the Clean Air Act and the Asbestos NESHAP regulations.

III. EPA FINDINGS

8. EPA makes these findings that Respondent violated Section 112 of the Act and applicable Asbestos NESHAP notification requirements based on the investigation of facts and circumstances underlying Mr. Michelson's participation, as an owner or operator of a demolition or renovation activity, in the demolition of the former Pines Motel, located at 1203 Waterbury Road in Stowe, Vermont (the "Demolition").

9. Respondent's demolition of the Pines Motel, a "facility" as defined at 40 C.F.R. § 61.141, commenced on or about April 1, 2010. The Demolition included, without limitation, the

wrecking or taking out of load-supporting *structural members* at the Facility and was a “demolition” as defined at 40 C.F.R. § 61.141. Subsequent to the Demolition, Respondent constructed multiple condominium units on the same property where the Facility had been located.

10. On or about May 10, 2010, EPA and the Vermont Department of Health (“VTDOH”) received information indicating that the Demolition began without prior notification to EPA, as required under the Asbestos NESHAP. Respondent’s first attempt to notify EPA was on or about June 10, 2010, by which time the Demolition was almost finished.

5. Respondent failed to inspect the Facility and/or failed to provide EPA with prior written notification of intention to demolish at least ten (10) working days prior to the start of the operation, as required by 40 C.F.R. § 61.145(b).

6. Based on the above-referenced violation of the Asbestos NESHAP and Section 112 of the CAA, Respondent is properly subject to the assessment of civil penalties pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

IV. TERMS OF SETTLEMENT

7. In light of the above, and taking into account the factors enumerated in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), EPA’s October 25, 1991 “Clean Air Act Stationary Source Civil Penalty Policy” and Appendix III thereto (the May 5, 1992 “Asbestos Demolition and Renovation Civil Penalty Policy”), including Respondent’s financial ability to pay a penalty and such other factors as justice may require, EPA has determined that it is fair and appropriate

that Respondent pay a civil penalty in the amount of five hundred dollars (\$500.00) in settlement of the violation alleged in Section III, above.

8. Respondent shall pay the penalty of \$500.00 within thirty (30) days of receipt of this CAFO signed by the Regional Judicial Officer.

9. Respondent shall pay the penalty by submitting a bank or certified check, to the order of the "Treasurer, United States of America," in the amount of \$500.00, to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall include the case name and docket number (*In re: Thomas C. Michelson*, Docket No. CAA-01-2011-0031) on the check. In addition, at the time of payment, notice of payment of the civil penalty and copies of the check shall be forwarded to both the Regional Hearing Clerk and the EPA attorney handling this case, at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code ORA 18-1)
Boston, Massachusetts 02109-3912

and

Hugh W. Martinez, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code OES 04-3)
Boston, Massachusetts 02109-3912

10. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay the civil penalty, Respondent will be subject to an action to compel payment plus interest, enforcement expenses (including attorneys' fees and costs for collection proceedings), and a nonpayment penalty. Interest will be assessed on any past due civil penalty amount if the penalty is not paid within thirty (30) calendar days of the date Respondent receives the CAFO signed by the Regional Judicial Officer. Interest on the civil penalty amount will accrue from the date of receipt and will be assessed at rates established in accordance with 26 U.S.C. § 6621(a)(2). A quarterly nonpayment penalty will also be assessed for each calendar quarter during which the failure to pay persists. The nonpayment penalty will be ten (10) percent of the total amount of any penalties, interest, enforcement expenses, and nonpayment penalties which is unpaid as of the beginning of each calendar quarter. If a collection action is necessary, the validity, amount, and appropriateness of the penalty shall not be subject to review.

11. The civil penalty due and any interest, non-payment penalties, or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

12. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, for the specific violation alleged in Section III of this

CAFO. Except as otherwise provided herein, EPA reserves all civil and criminal enforcement authorities, and specifically reserves its authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

13. The Parties each shall bear their own costs and attorney fees in the action resolved by this CAFO and Respondent specifically waives his right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

14. Respondent certifies that he is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent:



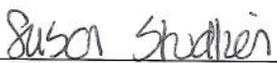
Thomas C. Michelson

(Title)

3/8/12

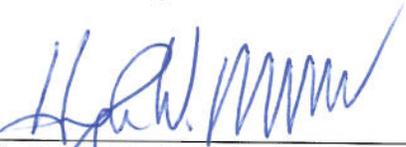
(Date)

For Complainant:



Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: 03/31/12

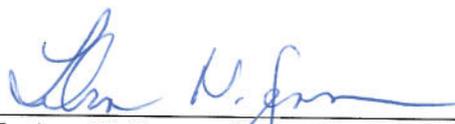


Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: 3-26-12

V. FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.



LeAnn W. Jensen, Acting Regional Judicial Officer
U.S. EPA, Region 1



Date

In Re: Thomas C. Michelson, CAA-01-2011-0031

CERTIFICATE OF SERVICE

I hereby certify that the foregoing cover letter and Consent Agreement and Final Order were delivered in the following manner to the addressees listed below:

Original and One Copy by
Hand Delivery to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

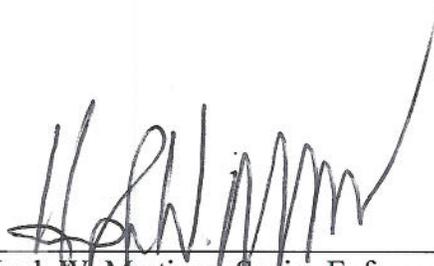
One Copy by Overnight
Courier to:

Thomas C. Michelson
1201 Waterbury Road
Stowe, VT 05672

Date:

4-4-12

Signed:



Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1 (Mail Code: OES 04-3)
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Phone (617) 918-1867
Fax (617) 918-0867
martinez.hugh@epa.gov