

**EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

This form was originated by: BENJAMIN COTTAN 4/27/10  
Name of Contact person Date

in the ORC Office at 215 814 2618 Phone number

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS

Administrative Order/Consent Agreement FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt

This is a modification

Name of Company making payment: WILKES - BARRE TOWNSHIP

The Total Dollar Amount of Receivable: \$7,500  
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number CAA-03-2010-0074

The Site-Specific Superfund Acct. Number \_\_\_\_\_

The Designated Regional/HQ Program Office \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
Name of Contact Date

in the Financial Management Office, phone number: \_\_\_\_\_

**JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:**

- |  |                              |
|--|------------------------------|
| 1. Rosemarie Pacheco<br>Environmental Enforcement Section<br>Lands Division, Room 130044<br>1425 New York Avenue, N.W.<br>Washington, D.C. 20005 | 2. Originating Office (ORC)  |
|  | 3. Designated Program Office |

**ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:**

- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 2. Designated Program Office |
| 3. Regional Hearing Clerk |                              |



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)

April 27, 2010

Samuel M. Sanguedolce, Esq.  
Wetzel, Caverly, Shea, Phillips & Rodgers  
15 Public Square, Suite 210  
Wilkes-Barre, PA 18701

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

Dear Sam:

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, April 28, 2010. Please note that the enclosed settlement is effective on the 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,

A handwritten signature in black ink, appearing to be "B. Cohan", written over a horizontal line.

Benjamin M. Cohan  
Senior Assistant Regional Counsel

Enclosures

cc: Rich Ponak(3LC32)  
James Mulligan, Esq.



“Complainant”), and Wilkes-Barre Township (“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.

## **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.

### **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 seven thousand, five hundred dollars (\$7,500), pursuant to Section 113(d) of the CAA, 42 U.S.C. §113(d).

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 shall constitute full and final satisfaction of the violations set forth in Paragraph 9 of this CAFO.

13. Payment of the seven thousand, five hundred dollar (\$7,500) civil penalty required under Paragraph 11, above, shall be made via cashier's check by the Respondent within thirty (30) days of the date that the attached Final Order is filed with the Regional Hearing Clerk, U.S. EPA, Region III, by the following payment methods, **made payable to the "United States Treasury,"** as follows:

By Regular US Postal Service Mail:

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

By Private Commercial Overnight Delivery:

U.S. Environmental Protection Agency  
Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Payment of the penalty as required by this CAFO may also be made by electronic transfer to:

Wire Transfers

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the wire transfer message should read:  
"D 68010727 Environmental Protection Agency")

Automated Clearinghouse (ACH) Transfers

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, D.C. 20074  
Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 310006  
CTX Format

Any payment by the Respondent shall reference that Respondent's name and address, and the EPA Docket Number of this CAFO. A copy of Respondent's check or a copy of Respondent's electronic transfer or ACH shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)  
EPA Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029, and

Benjamin M. Cohan  
Sr. Assistant Regional Counsel

U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

14. If Respondent fails to make payment of the civil penalty set forth in Paragraph 11 above, 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 be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). In any such collection action, the validity, and appropriateness of this CAFO, or the penalty assessed hereunder, are not subject to review.

15. Each party to this CAFO 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.

16. 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**

17. 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**

18. 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**

19. 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 Respondent is acknowledging and certifying that he or she is fully authorized to enter into this CAFO and to legally bind the Respondent to the terms and conditions of this CAFO.

#### **VIII. EFFECTIVE DATE**

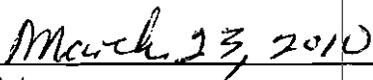
20. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

**IX. ENTIRE AGREEMENT**

21. 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.

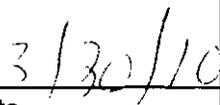
**FOR THE RESPONDENT  
Wilkes-Barre Township**

  
\_\_\_\_\_  
Name CARL KUREN  
Title MAYOR

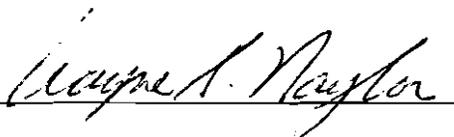
  
\_\_\_\_\_  
Date

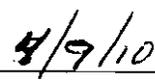
**FOR THE COMPLAINANT:  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION III**

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

  
\_\_\_\_\_  
Date

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

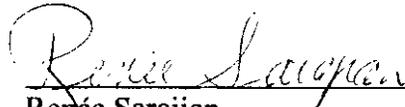
  
\_\_\_\_\_  
Date



("Respondent"), pay a civil penalty in the amount of seven thousand, five hundred dollars (\$7,500). Payment of the aforesaid civil penalty shall be made within thirty (30) days of the effective date of this Final Order. 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: 4/27/10

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

**CERTIFICATE OF SERVICE**

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

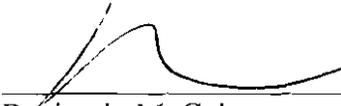
Docket No. CAA-03-2010-0074

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:

Samuel M. Sangeudolce, Esq.  
Wetzel, Caverly, Shea, Phillips & Rodgers  
15 Public Square, Suite 210  
Wilkes-Barre, Pennsylvania 18701

Date:

4/27/10

  
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 et.al. Docket No. CAA-03-2010-0074 – Settlement of Wilkes-Barre Township's liability

**FROM:** *EM* Marcia E. Mulkey *Redacted*  
Regional Counsel (3RC00)

and

*for* Abraham Ferdas, Director *AF*  
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 Wilkes-Barre Township (Respondent); however, the claims against the remaining Respondent, Stillwater Environmental Services, Inc., are still pending at this time. 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 Respondents will pay a civil penalty in the amount of seven thousand, five hundred dollars (\$7,500). 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.)