

FILED

2008 SEP 29 PM 3:36

U.S. EPA. REGION IX
REGIONAL HEARING CLERK

1 NANCY J. MARVEL
Regional Counsel

2

3 CAROL BUSSEY
Assistant Regional Counsel

4 KARINA LALLANDE
Law Clerk
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
7 (415)972-3950

8

9

10 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
11 SAN FRANCISCO, CA 94105

12

13 In the Matter of:)
14 LOS ANGELES DEPARTMENT OF) Docket No. CAA-09-2008-0038
WATER AND POWER,)
15 Respondent.) CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R.
16) §§ 22.13 and 22.18

17 I. CONSENT AGREEMENT

18 The United States Environmental Protection Agency, Region IX
19 ("EPA"), and Los Angeles Department of Water and Power
20 ("Respondent") agree to settle this matter and consent to the
21 entry of this Consent Agreement and Final Order ("CAFO"), which
22 simultaneously commences and concludes this matter in accordance
23 with 40 C.F.R. §§ 22.13(b) and 22.18(b).

24 A. AUTHORITY AND PARTIES

25 1. This is a civil administrative penalty action instituted
26 against Respondent pursuant to Section 113(d) of the Clean Air
27 Act ("CAA" or the "Act"), as amended, 42 U.S.C. § 7413(d), for
28 violation of Sections 112 and 114 of the Act, 42 U.S.C. §§ 7412
and 7414, and implementing federal regulations at 40 C.F.R. Part

1 61, Subpart M.

2 2. Complainant is the Director of the Air Division, EPA,
3 Region IX, who has been duly delegated the authority to initiate
4 this action and to sign a consent agreement settling this action.

5 3. Respondent is a department of a municipality with
6 offices located at 111 North Hope Street in Los Angeles,
7 California.

8 B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

9 4. Pursuant to Sections 112 and 114 of the Act, 42 U.S.C.
10 §§ 7412 and 7414, the EPA Administrator promulgated regulations
11 that govern the emission, handling, and disposal of asbestos and
12 associated record-keeping and notification requirements, which
13 are known as the National Emission Standards for Hazardous Air
14 Pollutants ("NESHAP") for asbestos and codified at 40 C.F.R. Part
15 61, Subpart M.

16 5. Section 302(e) of CAA, 42 U.S.C. § 7602(e), defines
17 "person" as an individual, corporation, partnership, association,
18 state, municipality, political subdivision of a State, and any
19 agency, department, and instrumentality of the United States and
20 any officer, agent, or employee thereof.

21 6. "Facility" means any institutional, commercial, public,
22 industrial, or residential structure, installation, or building
23 (including any structure, installation, or building containing
24 condominiums or individual dwelling units operated as a
25 residential cooperative, but excluding residential buildings
26 having four or fewer dwelling units). 40 C.F.R. § 61.141.

27 7. "Installation" means any building or structure or any
28 group of buildings or structures at a single demolition or

1 renovation site that are under the control of the same owner or
2 operator (or owner or operator under common control). 40 C.F.R.
3 § 61.141.

4 8. "Demolition" means the wrecking or taking out of any
5 load-supporting structural member of a facility together with any
6 related handling operations or the intentional burning of any
7 facility. 40 C.F.R. § 61.141.

8 9. "Owner or operator of a demolition or renovation
9 activity" means any person who owns, leases, operates, controls,
10 or supervises the facility being demolished or renovated or any
11 person who owns, leases, operates, controls, or supervises the
12 demolition or renovation, or both. 40 C.F.R. § 61.141.

13 10. An owner or operator of a demolition activity must
14 provide EPA with a written notice of intention to demolish at
15 least ten working days before demolition begins. 40 C.F.R. §
16 61.145(b)(1)(I).

17 11. In a facility being demolished, the notification
18 requirements of § 61.145(b) apply even if there is no asbestos.
19 40 C.F.R. §§ 61.145(a)(1) and (2).

20 C. ALLEGATIONS

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

23 13. At all times relevant to this CAFO, Respondent owned
24 three structures consisting of a store/pub, a storage building
25 and a small restroom located at 9596 US highway 111 near Niland,
26 California (the "site").

27 14. The site is an "installation" and therefore a
28

1 "facility" as defined at 40 C.F.R. §61.141.

2 15. In or around March 2007, Respondent began and completed
3 "demolition" of the structures at the site, as that term is
4 defined at 40 C.F.R. § 61.141.

5 16. On or about August 3, 2007, inspectors from the
6 Imperial County Air Pollution Control District, the California
7 Air Resources Board and EPA conducted an inspection at the site
8 and verified that the structures had been demolished.

9 17. Respondent is "an owner or operator of a demolition
10 activity" as defined at 40 C.F.R. §61.141.

11 18. Respondent did not submit a written notice of its
12 intention to demolish the structures at the site to EPA before
13 demolition began.

14 19. Respondent's failure to submit a written notice of its
15 intention to demolish the structures at the site to EPA before
16 demolition began constitutes a violation of 40 C.F.R.
17 §61.145(b)(1)(i).

18 D. RESPONDENT'S ADMISSIONS

19 20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the
20 purpose of this proceeding, Respondent (i) admits that EPA has
21 jurisdiction over the subject matter of this CAFO and over
22 Respondent; (ii) neither admits nor denies the specific factual
23 allegations contained in Section I.C of this CAFO; (iii) consents
24 to any and all conditions specified in this CAFO and to the
25 assessment of the civil administrative penalty under Section I.E
26 of this CAFO; (iv) waives any right to contest the allegations
27
28

1 contained in Section I.C of this CAFO; and (v) waives the right
2 to appeal the proposed final order contained in this CAFO.

3 E. CIVIL ADMINISTRATIVE PENALTY

4 21. Respondent agrees to the assessment of a penalty in the
5 amount of NINE THOUSAND, THIRTY DOLLARS (\$9,030) as final
6 settlement of the civil claims against Respondent arising under
7 the Act as alleged in Section I.C of this CAFO.

8 22. Respondent shall pay the assessed penalty no later than
9 thirty (30) days from the effective date of this CAFO. Payment
10 shall be made by cashier's or certified check payable to the
11 "Treasurer, United States of America," and shall be sent by
12 certified mail, return receipt requested, to the following
13 address:

14 US Environmental Protection Agency
15 Fines and Penalties
16 Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

17 The payment shall be accompanied by a transmittal letter
18 identifying the case name, the case docket number, and this CAFO.
19 Concurrent with delivery of the payment of the penalty,
20 Respondent shall send a copy of the check and transmittal letter
21 to the following addressees:

22 Regional Hearing Clerk
23 Office of Regional Counsel (ORC-1)
24 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

25 Chief, Air Enforcement Office
26 Air Division (AIR-5)
27 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

28 Carol Bussey

1 Assistant Regional Counsel
2 Office of Regional Counsel (ORC-2)
3 U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

4 23. Payment of the above civil administrative penalty shall
5 not be used by Respondent or any other person as a tax deduction
6 from Respondent's federal, state, or local taxes.

7 24. If Respondent fails to pay the assessed civil
8 administrative penalty specified in Paragraph 21 by the deadline
9 specified in Paragraph 22, then Respondent shall pay to EPA the
10 stipulated penalty of TWELVE THOUSAND, NINE HUNDRED DOLLARS
11 (\$12,900) rather than the assessed penalty, which shall become
12 due and payable upon EPA's written request. Such failure by
13 Respondent may also subject Respondent to a civil action to
14 collect any unpaid portion of the assessed penalty, together with
15 interest, handling charges, and nonpayment penalties as set forth
16 in Paragraph 25 below. In any such collection action, the
17 validity, amount, and appropriateness of this CAFO or the penalty
18 assessed hereunder are not subject to review.

19 25. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C.
20 § 3731, Respondent shall pay the following amounts:

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

27 b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a
28 monthly handling charge of \$15 shall be paid for any month in

1 which any portion of the assessed penalties is more than 30 days
2 past due.

3 c. Attorney Fees, Collection Costs, Nonpayment Penalty:

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

14 F. RETENTION OF RIGHTS

15 26. In accordance with 40 C.F.R. § 22.18(c), this CAFO only
16 resolves Respondent's liability for federal civil penalties for
17 the violations and facts specifically alleged in Section I.C of
18 this CAFO. Nothing in this CAFO is intended to or shall be
19 construed to resolve (I) any civil liability for violations of
20 any provision of any federal, state, or local law, statute,
21 regulation, rule, ordinance, or permit not specifically alleged
22 in Section I.C of this CAFO; or (ii) any criminal liability. EPA
23 specifically reserves any and all authorities, rights, and
24 remedies available to it (including, but not limited to,
25 injunctive or other equitable relief or criminal sanctions) to
26 address any violation of this CAFO or any violation not
27 specifically alleged in Section I.C of this CAFO.
28

1 27. This CAFO does not exempt, relieve, modify, or affect
2 in any way Respondent's duty to comply with all applicable
3 federal, state, and local laws, regulations, rules, ordinances,
4 and permits.

5 G. ATTORNEYS' FEES AND COSTS

6 28. Except as set forth in Paragraph 25(c) above, each
7 party shall bear its own attorneys' fees, costs, and
8 disbursements incurred in this proceeding.

9 H. EFFECTIVE DATE

10 29. In accordance with 40 C.F.R. §§ 22.18(b)(3) and
11 22.31(b), this CAFO shall be effective on the date that the final
12 order contained in this CAFO, having been approved and issued by
13 either the Regional Judicial Officer or Regional Administrator,
14 is filed.

15 I. BINDING EFFECT


16 30. The undersigned representative of Complainant and the
17 undersigned representative of Respondent each certifies that he
18 or she is fully authorized to enter into the terms and conditions
19 of this CAFO and to bind the party he or she represents to this
20 CAFO.

21 31. The provisions of this CAFO shall apply to and be
22 binding upon Respondent and its officers, directors, employees,
23 agents, trustees, servants, authorized representatives,
24 successors, and assigns.

25 32. This Consent Agreement constitutes the entire
26 agreement between the parties resolving this matter arising under
27 the CAA.
28

1 33. This document constitutes an "enforcement response" as
2 that term is used in EPA's Penalty Policy for the purposes of
3 determining Respondent's "full compliance history" as provided in
4 Section 113(e) of the Act, 42 U.S.C. § 7413(e).

5
6 FOR RESPONDENT, LOS ANGELES DEPARTMENT OF WATER AND POWER

7
8 Date: 9/23/08 By: 

9 Aram Benyamin
10 Senior Assistant General Manager- Power
11 System
12 LOS ANGELES DEPARTMENT OF WATER
13 AND POWER

14
15 FOR COMPLAINANT, EPA REGION IX

16
17 Date: 9/26/08 By: 

18 Deborah Jordan
19 Director, Air Division
20 U.S. ENVIRONMENTAL PROTECTION
21 AGENCY, REGION IX

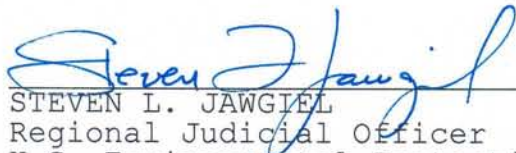
1
2 II. FINAL ORDER

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

5 IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2008-
6 0038) be entered, and that Respondent shall pay a civil
7 administrative penalty in the amount of NINE THOUSAND, THIRTY
8 DOLLARS (\$9,030) and comply with the terms and conditions set
9 forth in the Consent Agreement.

10 09/29/08

11 DATE

12 
13 STEVEN L. JAWGIEL
14 Regional Judicial Officer
15 U.S. Environmental Protection
16 Agency, Region IX
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that the original copy of the foregoing Consent Agreement and Final Order for The Los Angeles Department of Water and Power was filed with the Regional Hearing Clerk, Region IX and that a copy was sent by U.S. Certified Mail, Return Receipt Requested, to:

Aram Benyamin
Senior Assistant General Manager
Los Angeles Department of Water and Power
111 N. Hope Street
Los Angeles, CA 90012

Certified Mail No. 7003 3110 0006 2982

Date: SEP 29 2008



Danielle Carr
Regional Hearing Clerk