

**U.S. ENVIRONMENTAL PROTECTION AGENCY
HEADQUARTERS
WASHINGTON, D.C.**

In the Matter of:)
)
United States General Services)
Administration,)
Thomas P. O'Neill, Jr. Federal Bldg.)
10 Causeway Street)
Boston, Massachusetts 02222)
)
Goody Clancy and Associates, Inc.)
420 Boylston Street)
Boston, Massachusetts 02116)
)
ATC Associates Inc.)
221 Rue De Jean, Suite 200)
Lafayette, Louisiana 70508)
)
Suffolk Construction Company, Inc.)
65 Allerton Street)
Boston, Massachusetts 02119)
)
Fleet Industrial Services, LLC)
75-D York Avenue)
Randolph, Massachusetts 02368)
)
RESPONDENTS)
)

EPA Docket No. CAA-HQ-2011-0001
CONSENT AGREEMENT AND FINAL
ORDER

Proceeding Under Section 113(d) of the
Clean Air Act, as amended, 42 U.S.C.
Section 7413(d)

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ENVIR. APPEALS BOARD

I. INTRODUCTION

The Director of the Federal Facilities Enforcement Office, United States Environmental Protection Agency ("EPA"), as Complainant, and United States General Services Administration ("GSA"), Goody Clancy and Associates, Inc. ("Goody"), ATC Associates Inc. ("ATC"), Suffolk Construction Company, Inc. ("Suffolk"), and Fleet Industrial Services, LLC. ("Fleet"), (collectively, "Respondents"), enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO informs Respondents of the intention of EPA to assess a penalty against GSA, Goody, ATC, Suffolk, and Fleet for their alleged violation of Section 112 of the Clean Air Act ("Act" or "CAA"), 42 U.S.C. § 7412, and of regulations promulgated under Section 112 known as the National Emission Standards for Hazardous Air Pollutants for Asbestos, 40 C.F.R. Part 61, Subpart M ("Asbestos NESHP"). This CAFO informs Respondents of their 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 Respondents (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. Respondent GSA is a Federal agency and is a "person," as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
2. Respondent Goody has its principal place of business at 420 Boylston Street, Boston, Massachusetts, and is a "person" as defined in Section 302(e) of the Act.
3. Respondent ATC has its principal place of business at 221 Rue De Jean, Lafayette, Louisiana, and is a "person" as defined in Section 302(e) of the Act.
4. Respondent Suffolk has its principal place of business at 65 Allerton Street, Boston, Massachusetts, and is a "person" as defined in Section 302(e) of the Act.
5. Respondent Fleet has its principal place of business at 75-D York Avenue, Randolph, Massachusetts, and is a "person" as defined in Section 302(e) of the Act.
6. The John W. McCormack Post Office and Courthouse Building located at 90 Devonshire Street, Boston, Massachusetts, is a "facility" within the meaning of 40 C.F.R. § 61.141 ("Facility").
7. GSA developed a Prospectus Project ("Project") for the repair and renovation of the Facility. GSA contracted with Goody to design the Project and develop construction contract documents defining the scope of the work to be included in the Project. Goody sub-contracted with ATC to periodically inspect the integrity of the containment area, take samples, and conduct a final visual inspection of containment and clearance air sampling once it received notification from the contractor that asbestos abatement work had been completed. GSA awarded a construction contract to Suffolk for the "repair and alterations" of the Facility based on the contract documents developed by Goody. Suffolk sub-contracted with Fleet to perform "asbestos abatement and removal containment" at the Facility according to the requirements of the contract documents.

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8. On October 18, 2007, EPA issued an Immediate Compliance Order [No. CAA/ASB-ICO-2008-001] ("ICO") to GSA, ATC, Suffolk, and Fleet pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), citing various violations of Asbestos NESHAP requirements arising out of regulated *demolition and renovation operations*¹ GSA, ATC, Suffolk, and Fleet performed at the Facility in September and October of 2007. EPA issued the ICO based upon a determination by EPA that GSA, ATC, Suffolk, and Fleet violated certain Asbestos NESHAP requirements related to the handling, removal, and disposal of regulated asbestos-containing materials at the Facility, pursuant to Section 112 of the Clean Air Act, 42 U.S.C. § 7412, (the "Act") and 40 C.F.R. §§ 61.145 and 61.150(a). The role of Goody was unknown at the time the ICO was issued.
9. On April 22, 2008, EPA Region 1 issued a Reporting Requirement Letter (Docket No. CAA/ABS-114-2008-010) pursuant to Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1) to GSA, ATC, Suffolk, and Fleet. The role of Goody was unknown at the time the Section 114 letter was issued, and did not become known until after EPA reviewed the responses to the Section 114 letter.
10. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in this CAFO. For purposes of this proceeding, each Respondent waives any defenses it might have as to jurisdiction and venue.
11. Without admitting or denying the factual findings or conclusions of law herein, each Respondent consents to the terms of this CAFO.
12. Respondents agree not to contest the jurisdiction of EPA with respect to the execution, issuance, or enforcement of this CAFO.
13. Respondents acknowledge that they have been informed of the right to request a hearing, and each Respondent hereby waives the right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Each Respondent also waives the right to appeal the Final Order accompanying the Consent Agreement.

III. FINDINGS OF FACT

14. EPA makes these findings based on its investigation of facts and circumstances underlying each

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.

Respondent's participation, as an *owner or operator of a demolition or renovation activity*, (herein "Renovation") at the *Facility* in which Renovation commenced in or around October 2006 and continued through at least April 2008. EPA finds that the Renovation involved the *stripping or removal of regulated asbestos-containing material ("RACM")* in an amount of at least 260 linear feet on pipes, at least 160 square feet on other *facility components*, or at least 35 cubic feet of facility components where the length or area could not be measured previously and, accordingly, that the Renovation was subject to the Asbestos NESHAP.

15. The Renovation consisted of the removal of various *asbestos-containing waste materials ("ACM")* throughout the building including, but not necessarily limited to, pipe insulation, spray-on fireproofing, transite panels, vinyl asbestos floor tiles ("VAT"), mastic, and caulking. The Renovation resulted in the stripping, removal, dislodging, cutting, drilling, or disturbance of RACM including, but not necessarily limited to, friable pipe insulation, Category I nonfriable ACM, including VAT, that had become friable or was subjected to sanding, grinding, cutting, or abrading, and friable mastic associated with the VAT within the Facility. The combined amount of RACM that was stripped, removed, dislodged, cut, drilled, or similarly disturbed during the Renovation was at least 260 linear feet on pipes, at least 160 square feet on other facility components, or at least 35 cubic feet of facility components where the length or area could not be measured previously.
16. On October 4, 2007, duly authorized inspectors from the EPA Region 1 and the Massachusetts Division of Occupational Safety - Asbestos Program ("DOS") conducted an inspection of the Facility ("October 4, 2007 Inspection").
17. During the October 4, 2007 Inspection, inspectors observed RACM that was dry and friable (including, but not necessarily limited to, VAT and mastic) as well as asbestos-containing waste materials (including, but not necessarily limited to, construction debris) on the 7th floor of the Facility. The 7th floor was undergoing active renovation at the time of the inspection. Inspectors also observed dry, friable VAT, mastic, and other debris on a powered flooring removal machine used in the Renovation on the 7th floor. In addition, the inspectors observed fifteen (15), one-cubic yard cardboard totes on the 7th floor containing RACM and asbestos-containing waste materials. None of the fifteen (15) totes were labeled with the OSHA Asbestos label, or with the generator name and location. Inspectors observed one (1) tote with asbestos-containing waste materials, including RACM waste and miscellaneous debris, such as disposable equipment and/or clothing, which was not sealed in a leak-tight container.
18. On October 5, 2007, a duly authorized inspector from the DOS conducted an inspection of the Facility ("October 5, 2007 Inspection").
19. During the October 5, 2007 Inspection, employees from Fleet moved fourteen (14) one-cubic yard cardboard totes (originally observed during the October 4, 2007 Inspection) from the 7th

Floor into a containment area located on the 6th Floor of the Facility. Inside the containment area, the DOS inspector observed that the fourteen (14) totes contained dry RACM, which was not sealed in leak-tight containers. Employees from Fleet also moved an additional nine (9) one-cubic yard cardboard totes from the 1st floor of the Facility into the containment area located on the 6th Floor. Inside the containment area, the DOS inspector observed that seven (7) of the nine (9) totes contained dry RACM, and were not sealed in leak-tight containers or properly labeled. Two (2) of the nine (9) totes were not properly sealed or labeled.

IV. CONCLUSIONS OF LAW

20. Based on observations made during the October 4, 2007 Inspection, the October 5, 2007 Inspection, and the EPA investigation of the Renovation, EPA finds that each Respondent failed to undertake activities required by the Asbestos NESHAP including, but not necessarily limited to, the following:
- a. remove all RACM before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal, as required by 40 C.F.R. § 61.145(c)(1);
 - b. adequately wet RACM during stripping from facility components remaining in place at the Facility, as required by 40 C.F.R. § 61.145(c)(3);
 - c. adequately wet all RACM, including material that has been removed or stripped, and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150(a), as required by 40 C.F.R. § 61.145(c)(6);
 - d. properly collect, contain, and dispose of all asbestos-containing waste materials, including RACM that has been removed or stripped, in accordance with and as required by 40 C.F.R. § 61.150(a).
21. Accordingly, each Respondent violated Section 112 of the Act and 40 C.F.R. §§ 61.145 and 61.150(a), and is subject to administrative penalties under Section 113(d) of the Act.

V. TERMS OF SETTLEMENT

22. 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), the EPA 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"), and such other factors as justice may require, EPA has determined that it is fair and appropriate that Respondents pay a civil penalty in the amount of

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\$100,000 in settlement of the violations alleged herein.

23. Respondents shall pay the penalty of \$100,000 within thirty (30) days of receipt of this CAFO signed by the Environmental Appeals Board.
24. Respondent GSA shall make one payment, and the remaining Respondents shall collectively make another payment, by submitting bank or certified checks, to the order of the "Treasurer, United States of America," for the total amount of \$100,000 to:

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

For Overnight Delivery Services:
U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

and shall provide copies of the check to:

Dan Drazan, Esq.
U.S. Environmental Protection Agency
OECA/FFEO
1200 Pennsylvania Avenue, NW, MC 2261A
Washington, DC 20460

Respondents shall include the case name and docket number (*In Re: United States General Services Administration et. al.*, CAA-HQ-2011-0001) on the face of the check.

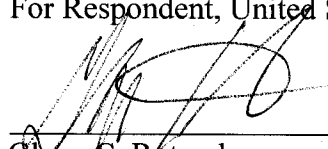
25. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondents fail to pay the civil penalty, Respondents will be subject to an action to compel payment plus interest, enforcement expenses (including attorneys' fees and costs for collection proceedings), and a nonpayment penalty. 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 this CAFO is signed by the Environmental Appeals Board. Interest on the civil penalty amount will accrue from the date this CAFO was signed, and will be assessed at rates established in accordance with 26 U.S.C. § 6621(a)(2). A quarterly nonpayment penalty also will be assessed for each calendar quarter

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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 are 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.

26. 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 purposes of Federal taxes. Accordingly, Respondents agree to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agree not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, state, or local law.
27. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, for the specific violations 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 Respondents to comply with said laws and regulations.
28. The Parties each shall bear its own costs and attorneys fees in the action resolved by this CAFO and each Respondent specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.
29. Each respective undersigned representative of the Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO, and to execute and legally bind the respective Respondent to it.

For Respondent, United States General Services Administration

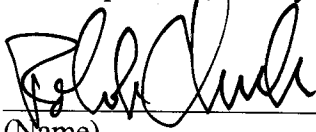


Glenn C. Rotondo
United States General Services
Administration

Acting Regional Administrator 11-3-10
Acting Regional Administrator

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For Respondent, Goody Clancy and Associates, Inc.



(Name)

Goody Clancy and Associates, Inc.

ROBERT CHANDLER

PRINCIPAL

(Title)

Nov. 4, 2010

(Date)

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For Respondent, ATC Associates. Inc.

Allen Miller

(Name)

ATC Associates. Inc.

Senior VP+ General Counsel

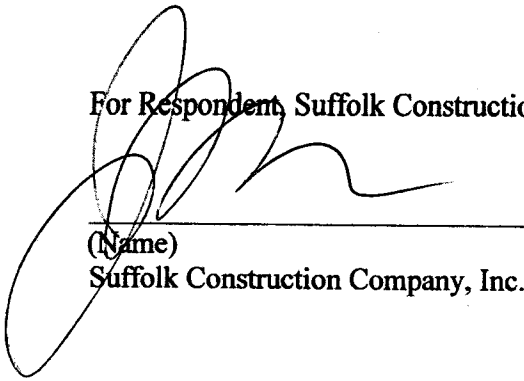
(Title)

11/3/2010

(Date)

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For Respondent, Suffolk Construction Company, Inc.



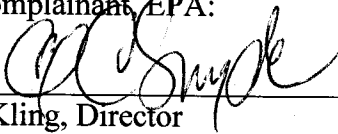
(Name)
Suffolk Construction Company, Inc.

John P. Gorman
~~Vice President~~
(Title)
General Counsel

71-3-10
(Date)

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For Complainant, EPA:

for 

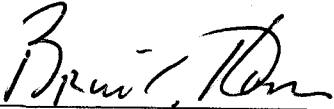
Date: 12/14/10

Dave Kling, Director
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1200 Pennsylvania Avenue, N.W.
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Washington, D.C. 20460

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For Respondent, Fleet Industrial Services, LLC.



(Name) Brian J. House
Fleet Industrial Services, LLC.

Manager
(Title)

11/4/10
(Date)

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