

John Vadas. He indicated that the project would begin on September 13, 2007 and would conclude on September 22, 2007, for a total of ten (10) days. (Ex. 23.)

Also on August 31, 2007, Vadas generated a spurious envelope to ODH purporting to be from “Safe Environment [*sic*] Corp.” for submission of the Notification Form and payment to ODH. (Ex. 24; Ex. 11, 481:24-482:21.)

Also on August 31, 2007, at 3:42 p.m., Amaya faxed a copy of Petitioner’s Ohio License, Bonilla’s Ohio Abatement Supervisor License (“Supervisor License”) and Bonilla’s Supervisor Refresher Certificate (“Supervisor Certificate”) each of which Amaya deceptively obtained from Petitioner. (Ex. 25; Ex. 12, 179:21-183:3)

Also on August 31, 2007, at approximately 4:30 p.m., Vadas sent by certified mail to ODH the Notification Form bearing fraudulent information (Ex. 23) and the forged money order (Ex. 21), in the spurious “Safe Environment Corp” envelope (Ex. 24) and mailed it to ODH.

Also on August 31, 2007, at 7:40 p.m., Vadas faxed a letter to Nationwide and listed “Safe Environment [*sic*]” on the letterhead. He indicated that the contact phone number for “Safe Environment” was Vadas’ cell phone number. He faxed Nationwide a copy of Petitioner’s Ohio License, Bonilla’s Supervisor License and Bonilla’s Supervisor Certificate (all of which he received from Amaya) and a copy of the ODH Notification Form that he mailed hours earlier to the ODH. He indicated in the facsimile that he foresaw “no problems” with the EPA. He suggested that the dates listed on the ODH Notification Form were purposely incorrect and that Nationwide should not be alarmed by this falsification by stating, “I just have to put something that looks good to the regulator.” Unlike his documentation to ODH that the project would take ten days, he advised Nationwide that Asbestek will “knock it out in two days, 3 at the most.” (Ex. 26.)

On September 11, 2007, Amaya worked his last day for Petitioner, abruptly and without notice to Petitioner, as he never showed up again to work. Amaya had no further communication with Petitioner after this date.

On September 12, 2007, Vadas faxed the first revised Notification Form to ODH. As in the original, he indicated the Safe Environmental contact person as “John Vadas,” identified his own cell phone number as the Safe Environmental contact number, and identified the Specialist as Bonilla. He changed the dates of friable asbestos abatement from September 14, 2007 to September 24, 2007, for a total of eleven days. (Ex. 27.) Asbestek did not perform any friable asbestos abatement at the Site as of this date.

On September 17, 2007, Vadas faxed the second revised Notification Form to ODH. As in the original, he indicated the Safe Environmental contact person as “John Vadas” and identified his own cell phone as the Safe Environmental contact number. He changed the Specialist to Amaya, even though he knew Amaya did not have a valid Ohio Supervisor License. He changed the dates of friable abatement from September 21, 2007 to September 25, 2007, for a total of five days. (Ex. 28.) Asbestek did not perform any friable asbestos abatement at the Site as of this date.

On Friday, September 21, 2007, Vadas faxed the third revised Notification Form to ODH. He changed the contact person for Safe Environmental to “Anthony Paganelli” but concealed this change by failing to identify it in the Notification Form’s “Revision Section.”<sup>7</sup> He did acknowledge in the Revision Section that the Specialist had been changed to Amaya, even though this change occurred in the September 17, 2007 Notification Form. He changed the dates

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<sup>7</sup> The Notification Form has a Revision Section that alerts the ODH to changes that are being made. In the third revised form, Vadas purposely did not identify that this change was being made, instead identifying a change that had been made in the second revised Notification Form.

of friable abatement from September 22, 2007 to September 26, 2007, for a total of five days. (Ex. 29.) Asbestek did not perform any friable asbestos abatement at the Site as of this date.

On Saturday, September 22, 2007, Asbestek commenced abatement of friable asbestos at the Site.

On Sunday, September 23, 2007, Asbestek concluded its friable abatement efforts at the Site, even though abatement was not properly done, for a total maximum abatement period of **two days**. Asbestek notified Nationwide that Asbestek concluded the friable asbestos abatement and that demolition could begin even though Vadas and Amaya were aware the abatement was incomplete. Vadas took no efforts to notify ODH that friable asbestos abatement concluded at this time, despite the change in abatement dates, but only did so two days later when ODH made an unannounced Site inspection.

On September 23 or 24, 2007, Nationwide began demolition of structures at the Site.

On September 25, 2007, ODH made an unannounced visit to the Site. (Ex. 30.) When Vadas learned of the inspection at the Site, he faxed the fourth revised Notification Form to ODH. He changed the dates of friable abatement to September 22, 2007 through September 23, 2007, for a total of two weekend days. (Ex. 31.) He changed the “setup” period to be included in the abatement period. He advised ODH that the friable asbestos abatement project was completed two days earlier.

On September 26, 2007, ODH contacted Petitioner regarding violations at the Site. ODH provided Petitioner’s then Manager Rick Lovelace (“Lovelace”)<sup>8</sup> with information on the Notification Form. Lovelace called the cell phone listed as the contact person for Safe Environmental and Vadas answered the phone. Lovelace told Vadas he had no authority to use

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<sup>8</sup> Lovelace is currently Petitioner’s president.

Petitioner's Ohio License and to cease any further use of it. Lovelace immediately informed ODH by faxed letter that Petitioner had no current projects in Ohio and that Vadas was not employed or authorized to act as an agent for Petitioner (Ex. 32.)

On September 27, 2007<sup>9</sup>, Euclid issued a Stop Work order to Nationwide and Thomas. (Ex. 33.) based on Asbestek's failed abatement at the Site.

On September 28, 2007<sup>10</sup>, Euclid declared the Site a public nuisance and ordered Piscazzi and Thomas to secure the Site and prevent entry. (Ex. 34)

From September 26, 2007 to the present, neither Vadas nor Amaya made any attempt to contact Petitioner in any manner despite the significant issues that had developed with abatement at the Site.

On November 10, 2008, Nationwide file a civil suit in the Court of Common Pleas for Richland County, Ohio, ("Richland County") Case No. CV Case No. 2008-CV-2002 for breach of contract and negligence against Petitioner, Asbestek, Thomas and Piscazzi relating to Nationwide's loss of revenue and property at the Site. (Ex. 35.) Nationwide alleged, in the alternative, that Asbestek did not have authority to use Petitioner's License and therefore fraudulently induced Nationwide to enter into a contract when Asbestek did not have an Ohio License. Defendants, including Petitioner, subsequently filed counterclaims and cross claims.

On January 14, 2010, the Office of the Ohio Attorney General ("OAG") prepared a criminal complaint against Amaya for recklessly causing or creating a substantial risk of physical harm related to the failed abatement at the Site. (Ex. 36.)

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<sup>9</sup> Paul Beno ("Beno"), Euclid's Acting Commissioner, erroneously dated the September 27 letter "August 27."

<sup>10</sup> Similar to his letter from the day prior, Beno erroneously dated the September 28 letter "August 28."



On February 12, 2010, the OAG, through the Cuyahoga County, Ohio Prosecutor issued a complaint against Amaya for Criminal Damaging related to Asbestek's failed abatement at the Site in violation of Ohio Revised Code § 2909.06, a misdemeanor of the first degree. (Ex. 37.)

On February 16, 2010, Asbestek was indicted by the OAG through the Cuyahoga County Prosecutor for violating Worker Protection Requirements for Abatement Projects in violation of Ohio Revised Code § 3710.08, a felony of the fourth degree. (Ex. 38.)

On March 15, 2010, Amaya pled guilty to Criminal Damaging related to Asbestek's failed abatement at the Site in violation of Ohio Revised Code § 2909.06, a misdemeanor of the first degree, and were ordered to pay restitution in the amount of \$1,500.00 to ODH; \$1,500.00 to the Cleveland Division of Air Quality; and \$500.00 to the Ohio EPA. (Ex. 39.)

Also on March 15, 2010, Asbestek and Amaya pled guilty to violating Worker Protection Requirements for Abatement Projects in violation of Ohio Revised Code § 3710.08, a felony of the fourth degree and was ordered to pay restitution a fine in the amount of ten thousand dollars (\$10,000.00). Asbestek paid the fine on March 11, 2011. (Ex. 38.)

## **B. Procedural Background**

On June 21, 2010 the EPA issued its first Administrative Order for the Site, naming Aydin, Piscazzi, Thomas, Nationwide and Asbestek as respondents and "liable parties" as defined by 42 U.S.C. § 9606(a) relating to the presence of hazardous substances at the Site including asbestos, lead and methyl ethyl ketone. (Ex. 40.)

On July 9, 2010, counsel for Nationwide notified the EPA about the Richland County action. (Ex. 41.) Counsel further provided a March 24, 2010, Affidavit of Amaya (Ex. 42) and a March 27, 2010, Affidavit of Collins (Ex. 43) for the purpose of compelling the EPA to add Safe Environmental as a Respondent and liable party. Amaya stated in his affidavit that Asbestek used Petitioner's Ohio License with "full permission and authority" from Paganelli, testimony

that he later denied. (Ex. 42; Ex. 12, 157:13 – 159:4; 177:2-4.) Collins stated, *inter alia*, in his affidavit that Asbestek warranted that Petitioner would “take over” the project if Asbestek was unable to procure an Ohio License, testimony which is wholly unsupported by Amaya in his deposition. (Ex. 12.)

On July 27, 2010, the EPA issued its first amendment of the June 21, 2010 Administrative Order (“AO”) adding Petitioner as a respondent and liable party. The EPA made no specific findings of fact with respect to Petitioner beyond the language it used in the original AO but simply amended the language to add Safe Environmental as a contracting party with Nationwide and Asbestek. (Ex. 1.) No such contract ever existed.

On July 23, 2010, Lovelace, Petitioner’s counsel, Nationwide’s counsel, and EPA On-Scene Coordinator Stephen Wolfe (“Wolfe”) conducted a site inspection to allow Petitioner to determine the cost of cleanup. Lovelace determined that under the removal action identified in the AO, i.e. addressing asbestos contaminants as well as other hazardous chemical issues, the extent of the demolition remnants and improperly abated standing structures required a total demolition of all structures and transport of all materials at a cost of approximately eight hundred thousand dollars (“\$800,000.00”).

On August 11, 2010, a Conference call was attended by counsel for Petitioner, Nationwide and Piscazzi, Wolfe, EPA Enforcement Specialist Carol Ropski, and EPA Regional Counsel Kevin Chow (“Chow”) to discuss removal requirements and deadlines under the AO. On this date the EPA identified August 23, 2010, as the date for the Notice of Intent to Comply with the AO, with the Work Plan and Safety Plan to follow statutorily thereafter.

On August 20, 2010, the EPA extended deadlines for the Notice of Intent to Comply and the Work Plan and Safety Plan to September 21, 2010. (Ex. 44.)

On August 23 and 24, and September 3, 2010, Safe Environmental's counsel took the video depositions of Amaya and Vadas for purposes of defending the Richland County matter and to provide evidence to the EPA that Petitioner was not liable under the AO. Petitioner invited the EPA to attend these depositions, which the EPA did in their entirety. Amaya's transcript and accompanying deposition exhibits (Ex. 12) and Vadas' transcript and accompanying deposition exhibits (Ex. 11) are attached hereto. Paganelli was and has remained available for his deposition, but no party has requested to depose him as of this Petition. Similarly, Petitioner offered the EPA the opportunity to interview Paganelli on a number of occasions, but no such interview was ever conducted by the EPA.

On September 20, 2010, the EPA again extended Respondents' deadlines for the Notice of Intent to Comply and the Work Plan and Safety Plan to October 21, 2010. (Ex. 45.)

On October 20, 2010, Petitioner submitted to the EPA a formal Contest of Responsibility and Request for Release as a Liable Party ("Contest of Responsibility"). Petitioner provided the EPA sworn deposition testimony from Amaya that refuted Amaya's affidavit statement that Petitioner's gave Amaya authority to use Petitioner Ohio License. Petitioner also provided evidence that Amaya and Vadas engaged in fraud and deceit in its use of Petitioner's Ohio License. (Ex. 46.) Despite this evidence, the EPA declined to release Petitioner as a liable party.

On October 21, 2010, Petitioner submitted its Notice of Intent to Comply. (Ex. 47.)

Also on October 21, 2010, Petitioner submitted its Work Plan and Safety Plan. (Ex. 48)

On November 8, 2010 the EPA requested clarification of Petitioner's Notice of Intent to Comply and found the Work Plan to be deficient. (Ex. 49.) The EPA gave Petitioner until November 15, 2010 to provide clarification and correct deficiencies.

On November 10, 2011, the EPA extended the deadline for Petitioner to provide clarification and correct deficiencies to November 23, 2010. (Ex. 50)

On November 11, 2010, Petitioner submitted to the EPA supplemental evidence in support of its Contest of Responsibility. (Ex. 51) Specifically, Petitioner provided cellular phone records to the EPA that contradicted Amaya's sworn deposition testimony with respect to circumstances surrounding his claim of obtaining authority for use of Petitioner's Ohio License.

On November 15, 2010, the EPA acknowledged that Petitioner's supplemental evidence identified in Exhibit 51 prompted the EPA to interview Amaya.

On November 16, 2010 the EPA interviewed Amaya and confronted him with the cellular phone records provided by Petitioner. Upon confrontation, Amaya modified his previously sworn testimony yet again. The EPA was satisfied with Amaya's third version of events and again declined to release Petitioner as a liable party.

On November 18, 2010, Petitioner submitted to the EPA additional supplemental evidence in support of its Contest of Responsibility. (Ex. 52.) Specifically, Petitioner identified new factual contradictions raised by Amaya before the EPA on November 16, 2011.

Also on November 18, 2010, Petitioner and its attorney met with the EPA at the Regional Office in Chicago to discuss factual findings, procedural requirements and settlement. Chow advised that the EPA would review all settlement offers submitted. Of specific concern to Petitioner was the extent of potential contamination of hazardous substances at the Site which required, as the EPA agreed, complete demolition and removal of all structures at the Site. Wolfe agreed with Petitioner that complete demolition and removal, in order to address the required action under the AO, would cost a private contractor approximately \$800,000 as estimated by Petitioner. At the meeting, Chow pointed out that Petitioner relied on the testimony of Amaya and Vadas in support of its arguments against liability but Petitioner had not offered any deposition testimony from Paganelli. Petitioner informed the EPA that it continually made Paganelli available for deposition to all parties in the Richland County action but none of the

parties has ever requested to take his deposition. However, Petitioner advised the EPA that Paganelli was available for any interview that the EPA wished to conduct. Despite this, the EPA never interviewed Paganelli.

On November 22, 2010, Safe Environmental made a monetary settlement offer of fifty thousand dollars (\$50,000.00) to the EPA in an effort to resolve its status under the AO pursuant to 42 U.S.C. §9622. (Ex. 53.)

On November 22, 2010, the EPA rejected the settlement offer, stating that the “offer of settlement is insufficient in light of [Petitioner’s] liability and the degree of asbestos-related work to be done at the Site, the cost of which is likely to be multiple times that of [the] offer.” (Ex. 54.)

On November 23, 2010, Petitioner responded to the EPA’s requests for clarifications and requests for corrections in deficiencies. (Ex. 55.)

On November 26, 2010, the EPA advised Petitioner that it was considered to be in “non-compliance” with AO Section 2 (“Designation of Contractor, Project Coordinator, and On-Scene Coordinator”) and Section 3.1 (Work Plan and Implementation) and that the EPA would consider its options with respect to enforcing the AO. (Ex. 56.) The EPA never informed Petitioner that it was out of compliance with respect to Petitioner’s Intent to Comply nor did the EPA take any action against Petitioner to enforce the AO. Additionally, the EPA did not perform any cleanup or remediation of the Site.

On March 15, 2011, Petitioner contacted the EPA to determine whether the EPA was open to continued discussion with respect to Petitioner’s position on liability and/or settlement.

On March 16, 2011, the EPA advised Petitioner that it was reviewing the manner in which it intended to proceed under the AO. The EPA requested that Petitioner keep the EPA

apprised of the Richland County trial as the outcome was likely to influence the EPA's enforcement actions. Trial is currently scheduled for June 14, 2012.

On May 12, 2011, Petitioner learned during discussions at a pretrial for the Richland County case that the EPA had determined that asbestos-related cleanup could be performed without the necessity of razing standing structures on the Site.

On June 3, 2011, the EPA confirmed with Petitioner's attorney that the cleanup could be performed without demolition of existing structures.

On June 6, 2011, the EPA advised Petitioner that the EPA was preparing to perform the cleanup of the Site but remained willing to allow Respondents to do the work. Petitioner renewed its November 2010 request to the EPA of being responsible under the AO solely for friable asbestos removal. The EPA responded that it would reconsider this request.

On June 15, 2011, the EPA advised Petitioner that it would "look favorably" on Petitioner's Intent to Comply being limited to addressing asbestos contamination at the Site. In response, Petitioner requested that Wolfe meet with Petitioner at the Site to address the extent of the EPA's requirements for asbestos remediation and removal.

On June 27, 2011, Petitioner and its counsel attended a Site inspection during which Wolfe identified the EPA's requirements for asbestos remediation and removal. (Ex. 57.) Petitioner brought two separate abatement companies, Hygieneering, Inc. of Willowbrook, Illinois ("Hygieneering") and Precision Environmental, 5500 Old Brecksville Road, Independence, Ohio 44131 ("Precision Environmental") to the inspection in order to obtain independent estimates for abatement of existing structures and removal of multiple asbestos-contaminated debris piles.

On June 28, 2011, Hygieneering provided Petitioner with an estimate for asbestos related remediation and removal at a cost of greater than five hundred thousand dollars (\$500,000.00.)

Also on June 28, 2011, Precision Environmental provided Petitioner with an estimate of two hundred thirty-six thousand dollars (\$236,000.00).

On June 30, 2011 the EPA advised Petitioner's that its individual compliance under the AO would be limited to asbestos remediation and removal. The EPA extended the deadline for Petitioner's Intent to Comply and the Work Plan and Safety Plan to July 8, 2011. The EPA also agreed to review a Work Plan and Safety Plan submitted prior to July 8, 2011 and provide any necessary guidance. (Exs. 58, 59.)

Also on June 30, 2011, the EPA advised Petitioner that although its deadline for the Notice of Intent to Comply and the Work Plan and Safety Plan had been extended to July 8, 2011, the EPA reserved the right to commence cleanup of the site on July 5, 2011. Petitioner advised the EPA that the EPA's decision to commence cleanup prior to the Intent to Comply deadline of July 8, 2011 was arbitrary and capricious and was detrimental to Petitioner's ability to meet the July 8, 2011 deadline in light of modified requirements under the AO. (Ex. 59.)

On July 1, 2011, Petitioner submitted its Work Plan and Safety Plan for preliminary review by the EPA. (Ex. 60.)

On July 5, 2011, the EPA indicated that Petitioner's Work Plan and Safety Plan were under review. (Ex. 61.)

On July 8, 2011, Petitioner submitted a modified Intent to Comply. (Ex. 62.) Specifically, Petitioner confirmed the EPA's prior approval that the Work Plan from Petitioner would be limited to asbestos contamination cleanup at the Site, that the cleanup of asbestos contamination would be performed by Precision Environmental, that the cleanup of asbestos would commence August 15, 2011, and that the EPA would allow a reasonable period of time for submission of a revised Work Plan. In the Intent to Comply, Petitioner denied that the

compliance was an admission of liability and specifically denied any liability with respect to the findings in the AO.

On July 8, 2011, the EPA approved Safe Environmental's Intent to Comply.

On July 13, 2011, with authorization from the EPA, Petitioner submitted a revised Work Plan. (Ex. 63.)

On July 14, 2011, due to revisions in the Work Plan (Ex. 63), Precision Environmental revised its estimate to two hundred ninety-five thousand, six hundred twenty dollars (\$295,620.00).

Also on July 14, 2011, with authorization from the EPA, Petitioner submitted its Asbestos Air Sampling Monitoring Plan. (Ex. 64.)

On July 27, 2011, Petitioner submitted a revised Work Plan and Health and Safety Plan pursuant to guidance from the EPA to Precision Environmental. (Ex. 65.)

On August 1, 2011, Petitioner submitted a subsequently revised Work Plan and Health and Safety Plan pursuant to additionally guidance from the EPA to Precision Environmental. (Ex. 66.)

On August 5, 2011, the EPA approved the August 1, 2011 revised Work Plan and Safety Plan and incorporated it into the AO. The EPA authorized Petitioner to have Precision Environmental and its subcontractor, RCS Environmental Group, LLC ("RCS") contact EPA's On-Scene Coordinator directly for implementation of the Work Plan and Safety Plan. (Ex. 67.)

On August 10, 2011, Petitioner requested an extension of the start date from August 15, 2011 to August 22, 2011. (Ex. 68.)

Also on August 10, 2011, Petitioner provided the EPA and Precision Environmental with access agreements from Piscazzi, Thomas and Pauline Aydin, widow of Aydin. (Ex. 69.)

On August 11, 2011, the EPA approved the start date of August 22, 2011. (Ex. 70.)