

**c. Vadas' Improper Forms Were Created to Prevent ODH from Contacting Petitioner and to Thwart Inspection Efforts**

Vadas filed a total of five Notification Forms with ODH; one original on August 31, 2007, and four revised versions on September 12, 17, 21 and 25, 2007. Vadas sent the original and first two revisions over a period of three weeks, containing a series of revised abatement dates and a change in Supervisor in an effort to test any potential response or follow up from the ODH based on the revisions. Once Vadas was convinced that the changes were being accepted by ODH without any response or inquiry, Vadas sent the third revision with Petitioner's correct contact information on Friday, September 21, one day prior to the planned, two-day weekend abatement because he was then convinced that ODH would not contact Petitioner prior to any work abatement being performed. Even if ODH were to contact Petitioner, Vadas knew the risk of such contact occurring within one business day of the planned abatement was extremely low. As discussed below, he also provided in the last-minute revised Notification Form that abatement would continue into the following week because he knew that ODH would not be able to plan for an inspection on such short notice and that Asbestek would be finished prior to any inspection. The detailed modifications to each form are illustrated as follows.

In the original Notification Form of August 31, 2007, Vadas identified a friable asbestos abatement period of September 14 through September 22, for a total of nine days at ten hours a day for a total of ninety hours.<sup>18</sup> He listed "John P. Vadas" along with Vadas' cell phone number for Petitioner's contact information. (Ex. 23.)

In the first revision Notification Form of September 12, 2007 (Ex. 27), Vadas changed the friable asbestos abatement period from nine days to ten days at ten hours a day for a total of one hundred hours. No change in estimate of material warranted this abatement period

---

<sup>18</sup> Vadas was aware from the original Notification Form to ODH throughout all subsequent deceptive revisions, that Asbestek had plans to "knock it out in two or three days," as he advised Nationwide on this same day that the nine or ten days was only there to look good to a regulator (Ex. 19).

modification. No friable asbestos abatement had been performed by Asbestek prior to this revision. Vadas kept the contact person for Petitioner as himself, with his cell phone number. Vadas changed the start date from September 13 to September 15, 2007.

In the second revision Notification Form of September 17, 2007, (Ex. 28), Vadas changed the abatement period from **ten days** to **four days** at ten hours a day for a total of **forty hours**. No change in estimate of material warranted this abatement period modification. No friable asbestos abatement had been performed by Asbestek prior to this revision. Vadas changed the Specialist from Bonilla to Amaya, even though Amaya did not possess a valid Supervisor License. Vadas kept the contact person for Petitioner as himself, with his cell phone number. Vadas changed the start date from September 15, 2007 to September 22, 2007.

In the third revision of Friday, September 21, 2007 (Ex. 29), Vadas changed the abatement period from **four days** to **five days** at ten hours a day for a total of **fifty hours**. He changed the start date to Saturday, September 22, 2007. No change in estimate of material warranted this abatement period modification. No friable asbestos abatement had been performed by Asbestek prior to this revision. Vadas changed the contact person from “John P. Vadas” to “Anthony Paganelli.” In order to conceal this change, Vadas advised ODH that the purpose of the revision was to only change the abatement dates and the Specialist information, when he knew the abatement contact information was a material change, yet purposely failed to indicate it. Vadas was also aware that the Specialist information remained unchanged from the preceding revision, despite his representation otherwise. Neither Vadas nor Amaya had any communication with Paganelli or any person from Safe Environmental that would give rise to the change in identification of the “contact person.”

In the fourth revision of September 25, 2007 (Ex. 31), Vadas changed the dates of abatement from **five days** to **two days** at less than ten hours a day for a total abatement time of

less than twenty hours. It is less than twenty hours, because unlike all other Notification Forms Vadas submitted, he identified the “set up” period to be included on the same dates that abatement was to occur, when he had previously identified “set up” to occur prior to abatement. Notably, the entire project, including set up and abatement was to be started and concluded on weekend, when the chance of inspection by ODH or the Ohio EPA would be zero. No change in estimate of material warranted this abatement period modification. Vadas also represented that the abatement was completed, when he knew this information to be false.

This fourth revision, unlike the others, was submitted after a change, not prior to one. For example, Vadas submitted no change in anticipated abatement between the September 21 and the September 25 revision, even though he was aware that modifications to the September 21 revision occurred. The fourth revision was actually submitted because it coincided with ODH’s unannounced visit and potential violations that began to arise as a result of improper asbestos abatement. (Ex. 30.) Vadas was aware of the significant problems that would ensue and therefore abruptly submitted the final revision to indicate that the project was complete in order to shift any violation blame upon Petitioner. In fact, Vadas told ODH representative who arrived that the “contractor” involved in the Site was Safe “Environment” and the representative erroneously transcribed this information through Vadas (see Ex. 30.) More importantly, Vadas failed to inform ODH representatives that the “contractor” was Asbestek, which would have been more consistent with Amaya’s claim that Petitioner was only providing the Ohio License so that Asbestek could do the contracting.

The original Notification Form and the four revised Notification Forms submitted by Vadas reflect a series of changes in the contractor contact person, contractor phone number, and Supervisor Information. The contact person was identified as Vadas so that if ODH officials inquired, Vadas, not Petitioner, would receive any confirmation phone calls from ODH. Once

Vadas was confident that any check on the first three Notification Forms had passed scrutiny, he submitted a revised form with Paganelli's contact information one day prior to abatement efforts. This, even though, he purposely failed to identify this change in the "revised lines number" section but instead purported that the purpose of the revision was to change the Specialist, even though this change had been performed in a prior revision. Vadas also submitted multiple forms to thwart inspection efforts. In the first few notification forms, he identified one hundred hours of asbestos abatement time, occurring during daylight. When the actual anticipated period arrived, he dramatically changed the abatement schedule to less than twenty hours, on the weekend and under the cover of the night (Ex. 11, 337:12-13).

The multiple, revised notification forms account for Amaya's and Vadas' efforts to minimize the likelihood of inspection and to develop the most effective methods to avoid discovery of their scheme should their efforts be exposed. No change in abatement requirements or the availability of laborers (as those used were all "out of work") warranted the multiple revisions. Additionally, Amaya ceased working for Petitioner on September 11, 2007 and was available for work. And yet all revision Notification Forms were submitted after this date. Vadas, of course, was also unemployed and was available for work. The multiple revisions were in fact only sent as part of the plan to avoid ODH inspection because ODH officials would not be able to predict with any degree of accuracy when the abatement would be performed. Multiple revisions were also an effort to test the clerical oversight of ODH and to determine whether the Notification Forms were being scrutinized.

Finally, Vadas' change in Petitioner's contact person from "John P. Vadas" to "Anthony Paganelli" occurred on a Friday, immediately prior to Asbestek's pre-planned weekend "abatement" effort to reduce the likelihood of ODH contacting Petitioner or conducting an inspection until the following Monday, as Vadas identified abatement efforts to continue into the

following week. Vadas predicted this perfectly because ODH made its inspection on Tuesday, September 25, 2007, at a time when Collins was demolishing the structure, which Vadas and Amaya believed would reduce the likelihood that any improper abatement efforts would be detected. As Vadas and Amaya spent nearly fourteen hours speaking to each other on the phone from the Original Notification Form to the last<sup>19</sup>, their concern about the information in the Notification Forms was substantial and indicative of fraudulent effort. The timing of the weekend abatement effort significantly reduced risk of exposing the fraud, should no problems have arisen.

**d. Amaya and Vadas Fraudulently Used Bonilla's Asbestos Supervisor License without Bonilla's Knowledge and When They Knew Bonilla Would Not Be Involved in Asbestek's Abatement Effort**

Amaya's and Vadas' deceptive use of Petitioner's Ohio License is illustrated in the parallel and identical action they took in their fraudulent use of Bonilla's Supervisor License. In order to obtain approval from ODH, asbestos abatement contractors must identify a Specialist. Purposeful misuse of Specialist information on the Notifications is further evidence that Amaya and Vadas engaged in continued course of conduct of deception in order perform on the contract with Nationwide.

Amaya authorized Vadas to put Bonilla's name on the Notification Form that would be submitted to ODH. Amaya did this because he claims Bonilla gave him permission to use his Supervisor License (Ex. 12, 194:12-13) but Amaya had no plans for Bonilla to be employed or present at the Site and admitted that Bonilla had absolutely no connection with the job (Ex. 12, 194:12-22.) Amaya testified that he identified Bonilla merely to deceive ODH (Ex. 12, 195:10-196:10.) Amaya claimed that he received permission from Bonilla to use his Supervisor License around the same time he received authorization from Paganelli (Ex. 12, 182:17-183:3, Ex. 12,

---

<sup>19</sup> See Section V.B.2.i, and Exhibit 85.

256:6-16.) Amaya testified that he obtained a copy of Bonilla's Supervisor License by telling Petitioner's office manager "Chris" to get a copy ready for him (Ex. 12, 258:10 – 12) and that "Chris" confirmed that Bonilla authorized it (Ex. 12, 258:21-259:24.) Bonilla denied that he ever gave Amaya or Vadas authority to use his Supervisor License. As Bonilla testified in an Affidavit (Ex. 85):

1. Amaya never asked Bonilla to participate, in any form, in asbestos abatement work in Ohio;
2. Amaya never asked Bonilla for the use of his Ohio Supervisor License for any job in the State of Ohio;
3. Bonilla never agreed to provide Amaya his Ohio Supervisor License for any job in the State of Ohio.
4. Bonilla never agreed to provide Amaya his Supervisor Certificate; and
5. Any use of Bonilla's Ohio Supervisor License was without Bonilla's permission.

Amaya admitted that Bonilla had nothing to do with the Site. As further evidence that he did not obtain Petitioner's Ohio License, Amaya admitted that had Paganelli actually given him authority to use the Ohio License, admitted that he also would have provided him with a Supervisor License (Ex. 12, 181:8-19.) Amaya admitted that Bonilla was never at the Site (Ex. 12, 223:1-2) and that he only provided Bonilla's Supervisor License to pass check at ODH (Ex. 12, 265:15-28.) In fact Amaya admitted that whether it was Bonilla as Specialist or Safe Environmental as the contractor, it did not matter if the person or entity had anything to do with the job but that the information was just to satisfy a government requirement (Ex. 12, 265:19 - 266:21.)

Amaya testified that the person listed as the Specialist on the Notification Form to ODH does not actually have to be the site supervisor (Ex. 12, 192:20-21.) In fact, according to Amaya,

ODH does not “care” who is listed as the Specialist as long as the Notification Form lists a valid Specialist (Ex. 12, 193:1-15.) Amaya testified:

Q: So, once again, you’re saying that Carlos [Bonilla’s] name should be [listed on the notification form]—

A: Yes.

Q: Because he gave you permission?

A: Yes.

Q: But it didn’t matter that he had nothing to do with the Nationwide contract?

A: Nope.

Q: And it didn’t matter that he was not going to be employed there?

A: No.

Q: And it didn’t matter that he no connection to this project at all?

A: Nope.

Q: That you were just going to put his name down?

A: Yes.

Q: And that would be acceptable for Ohio Department of Health in order to approve your [notification]?

A: Yes. (Ex. 12, 194:9-195:9)

Vadas’ approach to Bonilla’s relation to Asbestek’s work at the Site was similarly cavalier. When asked about whether Bonilla was actually present at the Site, Vadas testified,

Q. Okay. Did you get anything from Tomas Amaya?

A. Well, I got the name of the foreman, the supervisor.

Q. But you already had that from the July meeting, right?

A. Well, yeah, but I -- you know, I still had to put it down. I mean, did you want me to use [Bonilla] or do you want -- you know, how do you want to do this?

Q. What did he say?

A. He said put down [Bonilla].

Q. Did you ask him if [Bonilla] was going to be present?

A. No.

Q. Did you care?

A. Not really. It doesn’t matter as long as a foreman is there. As a matter of fact, at that time, I wasn’t even sure if –

Q. Did you say it doesn’t matter as long as a foreman is there?

A. Well, a licensed foreman.

Q. But it doesn’t -- didn’t have to be [Bonilla], right?

A. No.

Q. Where did you learn that?

A. Where did I learn that? From running multiple jobs and seeing paperwork that didn’t have -- that had everybody but the foreman on there. My name was -- I’ve run jobs where my name should have been there and it wasn’t. (Ex. 11, 202:2-203:7.)

Amaya knew that Bonilla would have no relation to the Site and that use of his Supervisor License was deceptive (Ex. 12, 318:11-16.) Vadas was also immediately aware at his original meeting with Amaya that a Specialist was needed (Ex. 11, 188:7-10.) In fact, Vadas assisted Amaya in filling out an application for a Supervisor License for Amaya (Ex. 11, 188:15-22.) Yet he never inquired of Amaya about the status of Amaya's Supervisor License when Amaya told him to use Bonilla's Supervisor License (Ex. 11, 280:3-15.) And Vadas changed the Specialist on the fourth revision Notification Form to identify the Specialist as Amaya when he knew Amaya was not so licensed. Vadas acknowledged that he identified Bonilla as the Specialist under the direction of Amaya (Ex. 11, 232:6-17.) Vadas never made any effort to clarify whether use of the Supervisor License was valid (Ex. 11, 232:19-20.) Vadas knew that Bonilla's Supervisor License was either being used without Bonilla's permission or that Bonilla was never going to be on site and therefore the Form to ODH was admittedly forged.<sup>20</sup> This is evidenced by the fact that Vadas first testified that he believed Bonilla was on site (Ex. 11, 233:12-17) but then that he knew he was not on site because "something came up where he was needed at another job." (Ex. 11, 337:20-338:2.) Amaya's and Vadas' use of Bonilla's Supervisor License is commensurate with their use of Petitioner's Ohio License: both were fully aware that neither license was authorized and they chose to forge the information in order to make a profit under the Nationwide contract.

**e. Vadas Purposely and Skillfully Tailored His Facsimile Communication to Deceptively Convince Nationwide that Asbestek Was Licensed While Concealing the Same from the EPA.**

As the Asbestek project manager in charge of communicating with Nationwide and preparing and submitting Notification Forms to ODH and the Ohio EPA, Vadas left a trail of

---

<sup>20</sup> Amaya's and Vadas' admission that Bonilla would not be the Specialist on site is an admission to violating R.C. §2913.31(A)(2) and (3).



skillfully prepared documents that illustrate his exhaustive concealment efforts. In a facsimile dated August 15, 2007, to Nationwide, Vadas used a facsimile header and footer identifying “John Vadas,” “Asbestek” and “JPV Services” but made no representation regarding Petitioner. (Ex. 13.) He indicated in the facsimile that he has “sent off a check today for the registration fee to do business in Ohio along with the application,” referring to Asbestek’s attempt to obtain an Ohio License (Ex. 12, 106:4-12.) This license was never actually ever applied for; Amaya blames that on Vadas’ failure to actually submit it and due to pressure by Collins (Ex. 12, 106:24-107:9) while Vadas claims it was either denied or Amaya never sent it, but he never inquired further (Ex. 11, 280:8-15.)

In a facsimile dated August 16, 2007, also to Nationwide, Vadas used a facsimile header and footer identifying “John Vadas,” “Asbestek” and “JPV Services” but made no representation regarding Petitioner. (Ex. 15.) In this facsimile, Vadas indicated he was putting together a packet to the state just to “C.Y.A.”<sup>21</sup> and the State may want to see something.”

In a facsimile dated August 23, 2007, also to Nationwide, Vadas used a facsimile header and footer identifying “John Vadas,” “Asbestek” and “JPV Services” but made no representation regarding Petitioner (Ex. 16.) In this facsimile, Vadas stated that he had just learned that an Ohio License was necessary to perform friable asbestos abatement. This, of course, is false, since Vadas had known this since his fist meeting with Amaya and likely knew this for years. He blamed this problem on advice from officials at ODH but soothed Nationwide by indicating that Asbestek will be using Ohio workers and an Ohio Supervisor and suggests that he will rely on this in the event of breach. He also indicated that despite this problem, “we will move on the friable A.S.A.P.”

---

<sup>21</sup> C.Y.A. is a slang term with the common meaning, “to cover your ass.”

In a facsimile dated August 24, 2007, also to Nationwide, Vadas used a facsimile header and footer identifying “John Vadas,” “Asbestek” and “JPV Services” but made no representation regarding Petitioner. (Ex. 18.) In this facsimile, he definitively stated that Asbestek may not have an Ohio License in time to begin friable asbestos removal and indicated that he and Amaya have a “business associate” who has an Ohio License and with whom Amaya has a very good relationship. He also reassured Collins that they “are still going to get our license for Ohio.” Vadas knew that no Ohio License would ever be obtained by Asbestek in time to perform the friable asbestos abatement because no application had been submitted.

In a facsimile dated August 31, 2007, also to Nationwide, Vadas used a facsimile header and footer identifying “John Vadas,” “Asbestek” and “JPV Services” but made no representation regarding Petitioner. He advised Nationwide that Asbestek would be using “Safe Environment [sic] Corporation of Indiana’s” Ohio License. Yet, in the facsimile, he provided Nationwide a copy of the EPA Notification Form stating that the contractor was “Asbestek” with the Ohio License as “Pending in Ohio.” (Exs. 19, 20.)

Also in a facsimile dated August 31, 2007, to Nationwide, Vadas used a facsimile header and footer identifying “John Vadas,” “Asbestek” and “JPV Services” but now added “Safe Environment” in the header. In the footer, he added “Safe Environment” as a contact but listed his cell phone number after Petitioner’s name. (Ex. 26.) Despite this new alleged alliance with Petitioner, which, if truly authorized would have allowed Asbestek to commence work immediately, Asbestek did not start work for three more weeks. Vadas still showed concern by stating “we will play it by the book on the friable containment and glove bag work” and expressed concerns about Asbestek’s ability to actually perform under the friable portion of the contract. He also advised that the dates he indicated to ODH are not correct, but just that “I just have to put something that looks good to a regulator.” He indicated that the friable asbestos will

only take two or three days when he notified ODH and Ohio EPA on this same date that the project would take at least ten days.

Also in a facsimile dated August 31, 2007, but this time to the Ohio EPA, Vadas removed the Safe Environmental alliance. Notably, he also removed any evidence relating to Vadas, including “JPV Services,” JPV Services’ website, JPV Services’ e-mail and Vadas’ fax number from the header and footer, instead only identifying “Asbestek” (Ex. 27.) This facsimile accompanied the submission of the Ohio EPA Notification Form. Vadas did not want to alert the Ohio EPA about Asbestek’s use of Petitioner’s Ohio License because it was unauthorized and Ohio EPA would likely conduct an inspection. Vadas calculated that if Ohio EPA conducted an inspection, it would be unaware that Asbestek had used Petitioner’s credentials in the Notification Form to ODH. Most telling of this plan is that no subsequent revision was sent to the EPA to correct the “error” of the Ohio License.

Amaya admitted that this was, in fact, the plan:

Q: So isn’t it true that what was being accomplished here was that any communication to Nationwide should have that new Safe Environment label because they had to be convinced --\*\*\* -- that Safe Environment was involved, right?

A. Yes.

\*\*\*

Q. But when communicating with the authorities, you would not want to have Safe Environment because they weren’t really involved, right?

\*\*\*

A: Not really involved. It’s kind of -- it’s not really because somehow they got involved.

Q. But the point is don’t raise a flag about it, right?

A. Yes.

Q. Is that fair to say? So take out Safe Environment when you’re talking to the authorities, right?

A. Yes. (Ex. 12, 249:1-250:4.)

Vadas described these discrepancies as follows: “It doesn’t really matter. I mean sometimes I forget to do things” (Ex. 11, 260:10-11) and “Asbestek has nothing to do with Safe

Environment.” (Ex. 11, 261:12-14.) When questioned about his use of his cell phone number for the contact for Safe Environmental he testified, “Why would I [use Safe Environment’s phone number...Nationwide] has no business with Safe Environment” (Ex. 11, 261:20 -262:2) and “these discrepancies are bullshit.” (Ex. 11, 266:24.)

These discrepancies can be explained only by the fact that Vadas sought to conceal from the EPA any connection to Petitioner, because he knew no legitimate relationship existed. Most telling of this effort is the two facsimiles on August 31, 2007, both sent at the exact same time of 10:39 a.m., on the same date that Vadas also filed the first Notification Form to ODH, wherein he took great effort to conceal what should have been a great alliance with Petitioner if it were true. If Vadas actually believed he had permission from Petitioner, he would have been eager to inform the EPA of an actual Ohio License rather than a “pending” license.

**f. Vadas Was Admittedly Unfamiliar with Notification Requirements but Never Sought the Assistance of Petitioner**

If Vadas believed that Asbestek’s Ohio License issue was allegedly resolved on August 31, 2007, Vadas would have had Petitioner at his disposal for guidance and assistance in properly preparing Notification Forms. Yet, he made no calls to Safe Environmental. (Ex. 11, 207:11-209:7.) In fact Vadas claimed that he struggled through multiple revision forms, making self-admitted mistakes and purported constant calls to ODH. Vadas testified repeatedly that he was overwhelmed by paperwork and had little experience in preparing notification forms:

Q: Once you knew about [allegedly being authorized to use Petitioner’s Ohio License], did you send a second revision [Notification Form to the EPA]?

A. No.

Q. Why not?

A. I don’t remember. Probably because I was so busy trying to get the other paperwork together. I was overwhelmed with paperwork and manpower and trying to get this job going. (Ex. 11, 320:5-12.)

\*\*\*

Q. You didn't know what you were doing [with the various Notification Forms], did you?

A. Well, no, I'm not going to say I didn't know what I was doing. I was -- I was answering the questions. And when I had a question, I would call Mark Needham or Jeff Gerdes or like you had the cover page there, somebody from the EPA or somebody from the Department of Public Health and ask them and one person would give me one answer and another person would give me another. Well, don't worry about it. Just add -- just put it -- throw another revision at us, okay. (Ex. 11, 327:18-328:5.)

\*\*\*

A: I did stay in contact with the EPA. I called them frequently on questions I had because I wasn't 100 percent familiar with Ohio law and I didn't know if there was any differences between that and whatever I knew about Illinois. (Ex. 11, 197:22-198:2.)

\*\*\*

A: \*\*\* You know, again, I'm not an expert at paperwork regarding ten-day notifications or anything --

Q. Did you tell Tomas that you were not an expert?

A. He knew that.

Q. How did he know that?

A. Well, because he worked with me for the last year prior so.

Q. So Tomas knew that you were not an expert in filling out ten-day notifications?

A. Well, who is? I mean, most of the -- the people that fill those out are usually secretaries or something like that.

Q. That's not a very extensive form, is it?

A. No. You just pretty much read -- but if you don't have the answers, you can't send it in. I mean, I don't -- I didn't know the age of the building. I didn't know who did know that fact. I didn't know the name of the owner. There was things that I just -- that weren't present in any document that I was privy to or that I received.<sup>22</sup>

Q. Did you ever call the Department of Health and ask a person there to assist you in answering any of the questions on there?

A. Yes.

Q. Okay. When was that?

---

<sup>22</sup> Notification Forms, which was being discussed in this exchange, do not require such information as the "age of the building." The owner was not a complex issue because Vadas knew this from the onset (see Exhibits 22, 23, 27, 28, 29 and 30.) The variations in each of his revision Notification Forms only dealt with proposed abatement periods and contact information for Petitioner. Vadas' preoccupation with Petitioner's contact information could have been resolved immediately with a call to Petitioner (if use of Petitioner's Ohio License was legitimate) by Amaya or Vadas, which **never** occurred.

A. Probably on one of my trips going back home. I might have called the EPA. I can't remember who I spoke with but –

Q. Do you know if you -- do you know who -- do you know -- do you remember what questions you asked?

A. Well, one particular question I was concerned about leaving the dumpsters on site. They were un -- they were --

Q. If I may, my question to you was about the notification form. Did you ever ask anyone at the Ohio Department of Health for assistance on filling out the ten-day notification form because you said a moment ago nobody knows how to fill out those forms except secretaries? So since you didn't have a secretary --

A. Well, no. I -- let me rephrase that. You go by line item, you know. It asks you what to put there. If you have the answer, you put it there.

Q. Okay.

A. I mean, some of the things, you know. Some of the things, you just don't know. (Ex. 11, 199:9-201:11)

\*\*\*

Q. In all this time that you were sending fax -- faxes to Nationwide and to the governmental authorities at the Department of Health and the EPA and all the phone calls trying to get assistance, did you ever place a single call to Safe Environment Company about anything?

A. No.

Q. Did you ever fax them anything?

A. No. (Ex. 11, 341:11-19.)

Yet Vadas submitted multiple revisions to ODH after he identified Petitioner's Ohio License on the original Notification Form. Vadas spent fifteen hours (eight hundred ninety-five minutes) communicating with Amaya by phone from August 31 2007 (the date on which he prepared the first Notification Form identifying "John P. Vadas" as the contact person for Petitioner's Ohio License) to September 21, 2007 (the date on which he changed the contact person to "Anthony Paganelli). (Ex. 86.)<sup>23</sup> During that time, he never sought the guidance or counsel of Petitioner. (Ex. 11, 207:11-209:7.)

---

<sup>23</sup> Exhibit 85 is a chart of phone records based on actual phone records that may be found in Exhibit 51.

**g. Vadas Obtained a Bank Check and Forged the Remitter as “Safe Environmental” in Furtherance of His and Amaya’s Fraud**

Vadas obtained a bank money order from Harris Bank in Indiana on August 31, 2007, in the amount of sixty five dollars (\$65.00”) payable to the State of Ohio (“Money Order”) for submission with the Notification Form to ODH identified by serial number 097901223. (Ex. 21.) He had the bank indicate the remitter as “Safe Environment Corp.” There is no requirement of the Notification Form that the licensed contractor be the remitter. There is also no requirement that the fee be paid with a money order or bank check as Question 2<sup>24</sup> only requires that the fee be submitted by “check.” Exhibit 30 accompanied the Notification Form prepared and submitted by Vadas. The Money Order was obtained in an attempt to legitimize Petitioner’s Ohio License on the Notification Form. Initially, Vadas denied any knowledge of the Money Order (Ex. 30) and testified that Amaya either wrote an Asbestek check or used a credit card in order to pay the fee. (Ex. 11, 323:13-324:12.) When he was confronted with Exhibit 30, he again denied any knowledge of the bank check and indicated it must have been “remitted” by Paganelli. (Ex. 11, 350:15-24.) Yet ODH identifies Money Order No. 097901223 in the amount of \$65.00 as having been received along with the original Notification Form 00807547 that Vadas prepared and submitted to ODH on August 31, 2007 (Ex. 87.) Furthermore, Paganelli never authorized the Money Order and Petitioner has never drawn, issued or remitted an official bank check or money order for an application for any abatement project, instead always using Petitioner’s official company check. (Ex. 88.)

---

<sup>24</sup> See Exhibit 12.

**h. Vadas Purposely Created a Spurious Safe Environmental Envelope for Submission to the Ohio Department of Health in Furtherance of His and Amaya's Deception**

As discussed, Vadas submitted the original Notification Form to ODH on August 31, 2007. (Ex. 23.) He included with it the official bank money order drawn on Harris Bank and had the remitter identified as "Safe Environment Corp." (Ex. 21.) He submitted these documents to ODH in an envelope that he generated using "Safe Environment Corporation of Indiana" as the return address (Ex. 24.) He then sent these documents from a post office in Hammond, Indiana three miles from his house. Vadas testified that it was acceptable for him to generate the spurious return envelope without permission from Safe Environmental. (Ex. 11, 481:24-482:21). Vadas actually generated the spurious return envelope, along with the falsely remitted bank check, to make it appear that the Notification Form was authorized and prepared by Petitioner. The exhaustive steps taken by Vadas to "authenticate" the Notification Form to ODH in conjunction with (1) his concealment of the same information to the EPA, (2) his concealment of the Safe Environmental contact information to Nationwide, and (3) his inexplicable failure to make any contact with Petitioner during this process is evidence that at a minimum, Vadas and Amaya were wholly aware that there was no authority to "use" Petitioner's Ohio License.

**i. Phone Records of Amaya and Vadas Reflect Zero Communication with Petitioner—Before, During and After Asbestek's Remediation Efforts at the Site**

Cell phone records for Amaya, Paganelli, Lovelace and Petitioner show that Amaya had regular contact with Paganelli, Lovelace and Petitioner while he worked as an abatement supervisor for Petitioner.<sup>25</sup> Petitioner's work logs show that Amaya worked as a supervisor for

---

<sup>25</sup> Cell phone records for Amaya, Paganelli, Petitioner and Lovelace may be found in Ex. 51. Amaya's cell phone number is 773.544.4848; Paganelli's cell phone number is 708.417.0272; Petitioner's office phone number is



Petitioner from August 12 to August 17, 2007 at the Mittal Steel Plant in Michigan City, Michigan. (Ex. 89.) He negotiated Asbestek's contract with Nationwide while employed with Petitioner and never advised Petitioner about Asbestek's contract. During this time he communicated regularly with Paganelli, Petitioner and Lovelace regarding his job responsibilities and requirements. From August 20, 2007 through September 11, 2007, Amaya worked as a supervisor for Petitioner at a Lake Forest, Illinois location. (Ex. 89.) During this time he communicated regularly with Paganelli, Petitioner and Lovelace regarding his job responsibilities and requirements. After September 11, 2007, eleven days prior to Asbestek's commencement of friable asbestos abatement at the Site, Amaya had zero communication with Paganelli, Petitioner or Lovelace. Vadas likewise had zero communication with Petitioner. Notably, Amaya took no effort to communicate with Petitioner during Asbestek's friable asbestos abatement at the Site. Despite this total lack of communication, Amaya spent nearly ten full hours on the telephone with Vadas from September 11, 2007 through September 25, 2007, the date on which ODH performed an unannounced inspection at the Site. Amaya claims that he repeatedly attempted to contact Paganelli when the inspection occurred on September 25, 2007. (Ex. 12, 234:1-24). As Petitioner pointed out to the EPA in its Contest of Liability, Amaya's phone records reflect two single calls to Paganelli. However, Paganelli's phone records show that no such calls were received by Paganelli's phone. (Ex. 90). This is explained by the possibility that in a state of panic due to the unauthorized use, Amaya had two fleeting thoughts of alerting Paganelli regarding his unauthorized use of Petitioner's Ohio License, but before each call could register to Paganelli's phone, Amaya abandoned these two efforts. Amaya made no attempts to contact Paganelli through Petitioner's main number. (Ex. 51.)

---

219.322.0844; Lovelace's cell phone number is 708.441.9526. Communication between Amaya and Paganelli, Petitioner and Lovelace has been organized into table format and may be found in Exhibit 85.

## **VI. STATEMENT OF INCURRED COSTS, FEES AND EXPENSES**

Petitioner incurred costs of at least three hundred eighty-six thousand, seven hundred ninety-eight dollars (\$386,798) plus interest, which includes response costs of two hundred ninety-five thousand, six hundred twenty dollars (\$295,620.00) plus interest; attorney's fees of at least ninety thousand, five hundred seventy-eight dollars (\$90,578) plus interest; and expenses of six hundred dollars (\$600.00). Petitioner paid Precision Environmental in full on November 30, 2011 for response costs. Petitioner has likewise incurred and paid the attorney's fees associated with the AO.<sup>26</sup> Petitioner will have incurred expenses of six hundred dollars associated with the AO, which is the amount that Precision Environmental will charge Petitioner for assisting in preparation of the Final Report. Consequently, Petitioner is entitled to reimbursement of costs of at least \$386,798.00 plus interest. Petitioner is prepared to demonstrate the reasonableness of costs, fees and expenses upon a finding by the EAB that Petitioner is entitled to reimbursement.

## **VII. PETITIONER IS ENTITLED TO REIMBURSEMENT OF COSTS**

Petitioner is not liable for response costs under 42 U.S.C. § 9607(a) and therefore Petitioner is entitled to reimbursement of response costs pursuant to 42 U.S.C. § 9606(b)(2)(C). *Employers Insurance of Wausau v. Browner*, 52 F.3d 656, 662 (7th Cir. 1995). Petitioner does not meet even the remotest statutory threshold for liability under CERCLA § 107(a) and has established by a preponderance of the evidence that it has no liability under the AO. The single, subsequently denied, statement of Amaya that he or Asbestek obtained authority to "use" Petitioner's License is insufficient to establish that Petitioner contracted, agreed or otherwise

---

<sup>26</sup> Pursuant to the EAB's "Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement for Petitions," § III.D, Petitioner has not included documentation of attorney's fees as evidence of the amount incurred or as evidence of their reasonableness.

arranged for the disposal or treatment of hazardous substances at the Site. As the forgoing establishes by greater than a preponderance of evidence, Petitioner is not liable for response costs associated with compliance with the AO and reimbursement is warranted. 42 U.S.C. § 9606(b)(2)(C). The costs that Petitioner paid to Precision Environmental to perform the cleanup was solely and entirely as a result of the AO and are therefore subject to reimbursement. *Flanders Industries, Inc. v. State*, 2003 WL 22717887, \* 6 (Mich. App. Nov. 18, 2003) (a PRP is entitled the recover costs incurred as a result of complying with an administrative order.)

### **VIII. PETITIONER IS ENTITLED TO RECOVER ATTORNEY FEES AND EXPENSES**

Reimbursement may be granted for costs, fees and other expenses associated with compliance with the AO. 42 U.S.C. 9606(b)(2)(E) provides in pertinent part:

Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28.

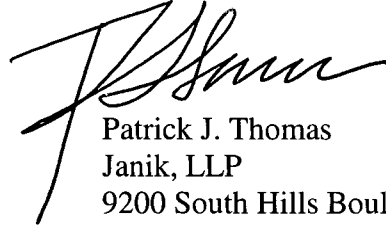
28 U.S.C. 2412(b) and (d) allows for the award of attorney's fees and other expenses associated with a civil action brought against the United States, unless a court finds that the United States was substantially justified or special circumstances make an award unjust. While 28 U.S.C. 2412 deals with court actions, 5 U.S.C. § 504 allows for recovery of attorney's fees in administrative actions. *In re Donald Cutler*, EAJA Appeal No. 05-01 (2007). Attorney's fees are warranted in this matter because Petitioner submitted substantial evidence on multiple occasions that it was not a liable party at the Site. Petitioner invited the EPA to attend the depositions of Amaya and Vadas (which the EPA did) and provided the EPA with their entire transcripts. Petitioner provided the EPA with its Contest of Liability which, through multiple exhibits, demonstrated that not only did Petitioner not provide Amaya with authority to use its

Ohio License, but that Amaya and Vadas knowingly, through a pattern of fraud and deceit, used Petitioner's Ohio License without permission. Petitioner exhausted great efforts in attempting to resolve its liability status with the EPA, including agreeing not to subject its Contest of Liability to restrictions of the Freedom of Information Act, meeting personally with Chow and Wolfe on multiple occasions, offering a settlement, obtaining and providing phone records to cast all doubt on Amaya's initial claim, obtaining and providing all ODH and Ohio EPA records to establish the pattern of fraud and deception committed by Vadas and Amaya, and, ultimately complying with every required action under the order, when Petitioner was not liable. The EPA was provided with every document, argument and exhibit available to Petitioner in this regard. Consequently, should the EAB determine that Petitioner is entitled to reimbursement, Petitioner respectfully submits that an award of attorney's fees is likewise warranted. Similarly with respect to costs, Petitioner is prepared to demonstrate that its attorney's fees and other expenses are reasonable.

## **IX. CONCLUSION**

For the foregoing reasons, Petitioner has established by a preponderance of the evidence required by 42 U.S.C. 9606(b)(2)(C) that it is not liable under 42 U.S.C. 9607(a) and respectfully requests that the EAB find that Petitioner is entitled to reimbursement of at least \$386,798.00, plus interest, which includes response costs of \$295,620.00, plus interest, attorney's fees of at least \$90,578, plus interest, and expenses of \$600.00.

Respectfully submitted,



Patrick J. Thomas  
Janik, LLP  
9200 South Hills Boulevard  
Suite 300  
Cleveland, Ohio 44147  
440.838.7600 Phone  
440.838.7601 Fax  
Attorney for Petitioner

Date: April 23, 2012

## APPENDIX

Exhibits 1 – 96 are being filed with the Central Data Exchange. The Exhibits are as follows.

- Exhibit 1 EPA Amended Unilateral Order (AO), Includes Petitioner
- Exhibit 2 EPA Final Pollution Report
- Exhibit 3 Affidavit, Anthony Paganelli, September 15, 2010
- Exhibit 4 Cleveland Trencher Company History
- Exhibit 5 Indiana Secretary of State, Asbestek, Inc. Business Entity Information
- Exhibit 6 Gary Thomas, Statement of Ownership
- Exhibit 7 Piscazzi Access Agreement, Evidence of Ownership
- Exhibit 8 City of Euclid, Ohio, Notice of Violation
- Exhibit 9 Affiliated Environmental Services, Inc., Estimate
- Exhibit 10 Nationwide/Thomas Contract
- Exhibit 11 Deposition Transcript of Vadas, with Exhibits
- Exhibit 12 Deposition Transcript of Amaya, with Exhibits
- Exhibit 13 August 15, 2007 Vadas Facsimile to Nationwide
- Exhibit 14 Asbestek/Nationwide Contract
- Exhibit 15 August 16, 2007 Vadas Facsimile to Nationwide
- Exhibit 16 August 23, 2007 Vadas Facsimile to Nationwide
- Exhibit 17 Ohio Secretary of State, Asbestek, Inc. Business Entity Information
- Exhibit 18 August 24, 2007 Vadas Facsimile to Nationwide
- Exhibit 19 August 31, 2007 Vadas Facsimile to Nationwide
- Exhibit 20 August 31, 2007 Vadas Facsimile to Ohio EPA and Ohio EPA Notification Form
- Exhibit 21 Harris Bank Money Order, \$65.00
- Exhibit 22 Vadas' First Prepared ODH Prior Notification Form, Not Submitted to ODH
- Exhibit 23 Vadas' First Submitted ODH Prior Notification Form, August 31, 2007
- Exhibit 24 Vadas' "Safe 'Environment' Corp. of Indiana" Return Envelope
- Exhibit 25 Bonilla Refresher Course, Bonilla Certification, Safe Environmental Ohio License
- Exhibit 26 August 31, 2007 Vadas Facsimile to Nationwide
- Exhibit 27 Vadas' Second Submitted ODH Prior Notification Form, September 12, 2007

- Exhibit 28 Vadas' Third Submitted ODH Prior Notification Form, September 17, 2007
- Exhibit 29 Vadas' Fourth Submitted ODH Prior Notification Form, September 21, 2007
- Exhibit 30 ODH Inspection Sampling Record
- Exhibit 31 Vadas' Fifth Submitted ODH Prior Notification Form, September 25, 2007
- Exhibit 32 Lovelace's Facsimile to ODH, September 26, 2007
- Exhibit 33 City of Euclid, Ohio, August 27, 2007 Stop Work Order to Nationwide
- Exhibit 34 City of Euclid, Ohio, August 28, 2007 Notice of Violation to Thomas and Piscazzi
- Exhibit 35 Nationwide's Richland County, Ohio Civil Complaint
- Exhibit 36 Ohio Attorney General Complaint against Amaya
- Exhibit 37 Cuyahoga County, Ohio, Misdemeanor Complaint for Amaya
- Exhibit 38 Cuyahoga County, Ohio, Felony Indictment for Asbestek
- Exhibit 39 Cuyahoga County, Ohio, Docket Entry for Amaya
- Exhibit 40 First Unilateral Administrative Order, Petitioner Not Included
- Exhibit 41 Nationwide Counsel's Correspondence to EPA, July 9, 2010
- Exhibit 42 Affidavit, Tomas Amaya, March 24, 2010
- Exhibit 43 Affidavit, Michael Collins, March 27, 2010
- Exhibit 44 EPA Correspondence to Petitioner's Attorneys, August 20, 2010
- Exhibit 45 EPA Correspondence to Petitioner's Attorneys, September 20, 2010
- Exhibit 46 Petitioner's Contest of Liability to EPA, October 20, 2010
- Exhibit 47 Petitioner's Notice of Intent to Comply, October 21, 2010
- Exhibit 48 Petitioner's Work Plan and Health and Safety Plans, October 21, 2010
- Exhibit 49 EPA's Request for Clarification, November 8, 2010
- Exhibit 50 EPA's Rejection of Extension for Clarification, November 11, 2010
- Exhibit 51 Petitioner's Supplemental Information to EPA, November 11, 2010
- Exhibit 52 Petitioner's Second Supplemental Information to EPA, November 18, 2010
- Exhibit 53 Petitioner's Settlement Offer to EPA, November 22, 2010
- Exhibit 54 EPA's Rejection of Petitioner's Settlement Offer, November 22, 2010
- Exhibit 55 Petitioner's Correspondence to EPA, November 23, 2010
- Exhibit 56 EPA's Correspondence to Petitioner, November 26, 2010
- Exhibit 57 Petitioner's Correspondence to EPA, June 29, 2011
- Exhibit 58 Petitioner's Correspondence to EPA, June 30, 2011
- Exhibit 59 Petitioner's Correspondence to EPA, June 30, 2011

- Exhibit 60 Petitioner's Correspondence to EPA, July 1, 2011
- Exhibit 61 EPA's Correspondence to Petitioner, July 5, 2011
- Exhibit 62 Petitioner's Intent to Comply to EPA, July 8, 2011
- Exhibit 63 Petitioner's Correspondence to EPA, Work Plan and Safety Plan, July 13, 2011
- Exhibit 64 Petitioner's Correspondence to EPA, Air Sampling Plan, July 14, 2011
- Exhibit 65 Petitioner's Work Plan and Safety Plans, July 26, 2011
- Exhibit 66 Final Work Plan, Approved by EPA, August 1, 2011
- Exhibit 67 EPA's Correspondence to Petitioner, August 5, 2011
- Exhibit 68 Petitioner's Correspondence to EPA, Start Date, August 10, 2011
- Exhibit 69 Petitioner's Correspondence to EPA, Access Agreements, August 10, 2011
- Exhibit 70 EPA's Correspondence to Petitioner, Start Date, undated
- Exhibit 71 Petitioner's Correspondence to EPA, Completion Date, October 3, 2011
- Exhibit 72 EPA's Correspondence to Petitioner, Completion Date, October 12, 2011
- Exhibit 73 EPA's Correspondence to Petitioner, Completion Date, October 31, 2011
- Exhibit 74 Precision Environmental Correspondence to Petitioner, Invoice, November 1, 2011
- Exhibit 75 Petitioner's Section 3.5 Final Report to EPA, December 15, 2011
- Exhibit 76 EPA's Correspondence to Petitioner, Site Inspection, November 10, 2011
- Exhibit 77 Petitioner Correspondence to EPA, Inspection and Final Report November 28, 2011
- Exhibit 78 Petitioner's Correspondence to EPA, Final Pollution Report, December 15, 2011
- Exhibit 79 Petitioner's Correspondence to EPA, Statute of Limitations, January 12, 2012
- Exhibit 80 EPA's Correspondence to EPA, Final Report, January 17, 2012
- Exhibit 81 Petitioner's Correspondence to Precision Environmental, January 17, 2012
- Exhibit 82 EPA's Correspondence to Petitioner, Required Action, February 3, 2012
- Exhibit 83 Petitioner's Correspondence to EPA, 30-Day Reports, November 10, 2011
- Exhibit 84 Affidavit, Anthony Paganelli, September 15, 2010
- Exhibit 85 Affidavit, Carlos Bonilla, September 11, 2010
- Exhibit 86 Chart of Amaya's Phone Records
- Exhibit 87 ODH Receipt from Vadas' Original Notification Form and Payment
- Exhibit 88 Affidavit, Anthony Paganelli, January 17, 2012
- Exhibit 89 Petitioner's Work Records for Amaya
- Exhibit 90 Paganelli's Cell Phone Records for September 24 and 25, 2007
- Exhibit 91 Petitioner's Section 3.5 Final Report to EPA, March 2, 2012



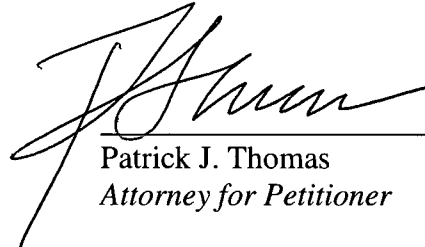
- Exhibit 92 EPA's Correspondence to Petitioner, Final Report, March 9, 2012
- Exhibit 93 Petitioner's Section 3.5 Final Report to EPA, March 12, 2012
- Exhibit 94 EPA's Motion to Dismiss Petition No. CERCLA 106(b) 12-01
- Exhibit 95 EPA's Order granting EPA Motion to Dismiss Petition No. CERCLA 106(b) 12-01
- Exhibit 96 EPA's Notification of Completion

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing CERCLA 106(b) Petition and Exhibits 1-96 were filed by electronic submission to the Environmental Appeals Board (“EAB”) through the Central Data Exchange this 23rd day of April 2012. A hard copy of the original Petition along with Exhibits 1-96 are have been sent by FedEx this 23rd day of April 2012 to:

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board  
Ronald Regan Building, EPA Mail Room  
1300 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Date: April 23, 2012



---

Patrick J. Thomas  
*Attorney for Petitioner*

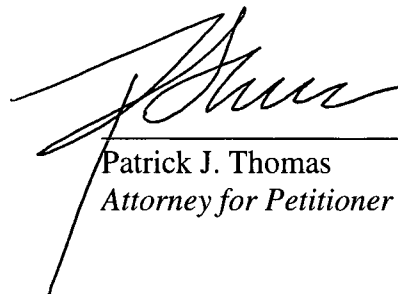
I hereby certify that a copy of the foregoing CERCLA 106(b) Petition was served on the U.S. Environmental Protection Agency electronically to chow.kevin@epamail.epa.gov this 23rd day of April 2012. A hard copy of the original Petition along with Exhibits 1-96 are have been sent by FedEx this 23rd day of April 2012 to:

Richard C. Karl  
Director, Superfund Division – Region 5  
United States Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Carol Ropski  
United States Environmental Protection  
Agency - Region 5  
Enforcement Services Section #1 SE-5J  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Kevin Chow  
Associate Regional Counsel  
United States Environmental Protection  
Agency – Region 5  
77 West Jackson Boulevard, C-14J  
Chicago, IL 60604-3590

Date: April 23, 2012



---

Patrick J. Thomas  
*Attorney for Petitioner*