

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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In re: ) CERCLA 106(b) Petition No. \_\_\_\_\_  
Safe Environmental Corporation of Indiana, )  
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Petitioner )  
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\_\_\_\_\_ )

**PETITION FOR REIMBURSEMENT OF COSTS, FEES, AND OTHER  
EXPENSES PURSUANT TO 42 U.S.C. § 106(b)(2)(A) AND (C)**

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## **I. BACKGROUND INFORMATION**

Pursuant to the “Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement for Petitions,” Petitioner submits the following background information.

### **PETITIONER:**

SAFE ENVIRONMENTAL CORPORATION OF INDIANA  
2301 CLINE AVENUE  
SUITE 106  
SCHERERVILLE, INDIANA 46375

### **PETITIONER’S ATTORNEY:**

PATRICK J. THOMAS  
(Ohio Supreme Court #0075276)  
JANIK LLP  
9200 SOUTH HILLS BOULEVARD  
SUITE 300  
CLEVELAND, OHIO 44147  
440.838.7600 Phone  
440.838.7601 Fax

### **FACILITY:**

CLEVELAND TRENCHER  
21000 ST. CLAIR AVE  
EUCLID, OH 44117

### **U.S. EPA DOCKET NO.:**

V-W-10-C-950

## **II. INTRODUCTION**

Safe Environmental Corporation of Indiana (“Petitioner” or “Safe Environmental”) respectfully submits this Petition for Reimbursement of Costs, Fees and Other Expenses (“Petition”) pursuant to Section 106(b)(2)(A) and (C) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (“CERCLA”), 42 U.S.C. §

9606(b)(2)(A) and (C) to the Environmental Appeals Board (“EAB”). Petitioner seeks reimbursement of at least three hundred eighty-six thousand, seven hundred ninety-eight dollars (\$386,798.00) 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 (\$90,578.00), which is the current amount incurred by Petitioner, plus interest and expenses of six hundred dollars (\$600.00) incurred in complying with the First Amended Administrative Order (“AO”), Docket No. V-W-10-C-950, issued by the United States Environmental Protection Agency, Region 5 (“EPA”) pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a), on July 27, 2010. The AO required Petitioner and other Respondents, including Metin Aydin, the Joseph J. Piscazzi Revocable Trust, Gary L. Thomas, Nationwide Demolition Services, LLC and Asbestek, Inc. to perform a response action at the Cleveland Trencher Company, 21000 St. Clair Avenue, Euclid, Ohio 44117 (“Site”). The AO is attached as Exhibit 1.

Petitioner also seeks a determination from the EAB that it is not liable for administrative and/or oversight costs should the EPA assess any such costs to Petitioner. Despite Petitioner’s requests, the EPA has not provided Petitioner with a formal accounting or determination of administrative and/or oversight costs associated with the AO.

The EPA prepared its Final Removal Pollution Report on November 29, 2011 and made the Final Pollution Report available to Petitioner on December 15, 2011. (Ex. 2.) The EPA has not issued a Notice of Completion of the response action as of this Petition.

Petitioner is entitled to reimbursement under CERCLA § 106(b)(2)(A) and (C) because Petitioner is not a liable party under CERCLA § 107(a) as explained more fully herein.

Petitioner meets the statutory and regulatory threshold requirements for reimbursement:

1. Petitioner complied fully with the terms of the AO;

2. This petition is being filed within 60 days after completion of the response action; and
3. Petitioner incurred response costs, attorney fees and other expenses in complying with the AO.

The EPA made Petitioner a Respondent to the AO based on a single, uncorroborated statement in an Affidavit of Tomas Amaya (“Amaya”). Amaya stated that Petitioner’s then president, Anthony Paganelli (“Paganelli”) let Amaya, and his one-man operation Asbestek, Inc. (“Asbestek”), use Petitioner’s Ohio Asbestos Abatement Contractor License (“Ohio License”) to abate friable asbestos at the Site. Subsequent to the AO, Amaya withdrew the single statement upon which the EPA relied. Amaya not only lied in his Affidavit, but his deposition testimony showed that he stole Petitioner’s Ohio License and conspired with his *ad hoc* partner John Vadas (“Vadas”) to forge Prior Notification for Asbestos Hazard Abatement Forms (“Notification Form”) submitted to the Ohio Department of Health (“ODH”) related to abatement efforts at the Site.<sup>1</sup> Additionally, subsequent to Amaya’s deposition, Petitioner obtained Amaya’s cell phone records which showed that Amaya lied in his deposition as well. Petitioner provided the cell phone records to the EPA and the EPA’s regional counsel, Kevin Chow (“Chow”) confronted Amaya with the records. In that meeting, Amaya reversed his deposition testimony again and lied to the EPA, thereby having provided four alternating, inconsistent versions of his original statement relied upon by the EPA in finding Petitioner liable under the AO. Amaya also outright admitted in his deposition that he fraudulently submitted false Abatement Specialist information the ODH for work at the Site in the exact same manner the Petitioner has proven he did with Petitioner’s Ohio License.

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<sup>1</sup> In order to abate friable asbestos, ODH requires that the Notification Form identify the contractor that will perform the abatement and the contractor’s Ohio License number.

Amaya and Asbestek were charged with and convicted of misdemeanor and felony charges in Cuyahoga County, Ohio related to their criminal abatement efforts at the Site. Amaya abandoned all obligations to Ohio authorities who investigated the failed abatement at the Site and made zero attempts to comply with the AO when it was his criminal actions that were at the root of all asbestos contamination identified in the AO. Amaya is incredible, unreliable, and not a shred of evidence, including phone records or the testimony of Vadas, corroborates any version of events he has described to date.

Petitioner denies it ever provided authority for Amaya to use its Ohio License and Petitioner had no involvement at the Site. Additionally, the following facts are **uncontested**: (1) Petitioner is not an owner of the Site; (2) Petitioner did not enter into any contracts relative to the Site; (3) Petitioner did not provide inspections, estimates, workers, advice, equipment, payment, insurance, applications, notifications, or any goods or services related to the Site; (4) Petitioner did not engage in the abatement, removal or transport of any material at the Site; (5) Petitioner did not submit any documents to the State of Ohio regarding the Site; (6) Amaya was not employed by Petitioner when Asbestek undertook its abatement efforts at the Site; and (7) Petitioner had no knowledge of the Site until Asbestek concluded its abatement efforts at the Site.

Petitioner submitted voluminous documentation to the EPA of the above evidence, and contested the EPA's tenuous finding and unsupported position that Petitioner was a liable party under the AO. Despite Petitioner's exhaustive efforts in this regard, the EPA declined to release Petitioner as a Respondent. Petitioner also made an offer of settlement to the EPA which the EPA rejected. The EPA also declined to amend the order to add Vadas as a respondent when Vadas' own testimony proved that he was liable for contamination at the Site. Despite the six other parties who are all liable for friable asbestos contamination at the Site, only Petitioner

complied with the AO to remove friable asbestos contamination. Petitioner complied with the AO in full and now seeks reimbursement of costs, attorney's fees and expenses because it is not and was not liable under CERCLA for response action at the Site. Petitioner is able to establish well beyond a preponderance of the evidence that it is not liable under CERCLA 107(a) and that reimbursement is warranted.

### **III. FACTUAL AND PROCEDURAL BACKGROUND**

#### **A. Factual Background**

Petitioner is Safe Environmental Corporation of Indiana, located at 2301 Cline Avenue, Schererville, Indiana. Petitioner is licensed to perform asbestos, mold and other hazardous material abatement in multiple states. In 2007, Petitioner maintained Asbestos Hazard Abatement Contractor Licenses in Indiana, Illinois, Minnesota, Michigan and Ohio. (Ex. 3.)

In 1923, Cleveland Trencher was founded for purposes of manufacturing trenching machines. (Ex. 4.)

In 1987, Metin Aydin ("Aydin") purchased the Site from American Hoist & Derrick Co., of St. Paul, Minnesota and operated the factory until some point in the 2000s. (Ex. 4.)

On December 11, 2006, Amaya, an asbestos abatement supervisor who worked for Petitioner since 2001, incorporated Asbestek with the Indiana Secretary of State. (Ex. 5.) Amaya worked for Petitioner until he abruptly, and without notice, ceased further work on September 11, 2007, a date which coincided with Asbestek's abatement efforts at the Site.

At some time prior to 2007, through transactions unknown to Petitioner, Gary L. Thomas ("Thomas") obtained ownership of the Site. (Ex. 6.)



Also at some time prior to 2007, and also through transactions unknown to Petitioner, the Joseph J. Piscazzi Trust (“Piscazzi”) became trustee of the Site through the Piscazzi Trust. (Ex. 7.)

On June 14, 2007, the City of Euclid, Ohio (“Euclid”) issued a “Notice of Violation: Condemnation and Order to Demolish Unsafe Structure” to Thomas and Piscazzi relating to conditions at the Site. (Ex. 8.) In order to comply with the Notice, Thomas and Piscazzi learned that structures on the Site had asbestos that had to be removed prior to demolition.

On August 9, 2007, Affiliated Environmental Services (“Affiliated”) prepared an Asbestos Survey of the Site and estimated the cost of asbestos abatement in the amount of one hundred two thousand, four hundred fifty dollars (\$102,450.00). (Ex. 9.)

On August 14, 2007, Nationwide Demolition, LLC (“Nationwide”), through its owner Michael Collins (“Collins”), entered into a contract with Thomas to perform demolition services at the Site. (Ex. 10.) Thomas provided Collins with a copy of Affiliated’s asbestos Survey.

On August 15, 2007, Collins, owner of Nationwide, contacted Vadas regarding Nationwide’s need for asbestos abatement of structures on the Site. Vadas was an unemployed asbestos abatement worker who knew Collins from prior work. Vadas was a prior asbestos abatement supervisor with Petitioner who left on poor terms in 2005. (Ex. 11, 61:12-63:14; 310:24-311:20.) Collins faxed Vadas the Affiliated Survey with redacted estimate figures and inquired as to whether Collins could “get the job done for fifty thousand.” (Ex. 11, 153:3-14.) Vadas contacted Amaya, whom he knew through his prior work with Petitioner, and whom Vadas was aware was attempting to start his own abatement business.

On August 15, 2007, Vadas and Amaya met in Hammond, Indiana to discuss using Asbestek to perform the asbestos abatement work for Nationwide. The two agreed that Vadas would be the project manager who would handle the paperwork. (Ex. 11, 155:13-3; 124:8-9;

128:18-19; 155:1-4.) Amaya would arrange for laborers, insurance and waste disposal. The two would split the profit, which Amaya estimated at \$7,500 each. (Ex. 12, 82:13-18; 237:7-8.)

Also on August 15, 2007, Amaya and Vadas discussed the need for an Ohio License which is required by the ODH in order to undertake the **friable** asbestos abatement in Ohio.<sup>2</sup> According to Amaya, Vadas told him that Nationwide had an Ohio License that Asbestek could use for the abatement. (Ex. 12 77:1–16.) According to Vadas, Amaya advised that Asbestek did not have an Ohio License, but Amaya could get Petitioner’s Ohio License if needed. (Ex. 11, 132:12 – 133:9.)

On August 15, 2007, despite either Amaya’s or Vadas’ deposition testimony regarding the intended source of a necessary Ohio License, Vadas sent a facsimile to Collins stating that Asbestek had applied for its Ohio License (Ex. 13.)

On August 16, 2007, Vadas prepared and signed a contract with Nationwide for non-friable and friable asbestos abatement at the Site for a fee of fifty thousand dollars (\$50,000). He faxed the contract to Collins, who signed it and faxed it back to Vadas. (Ex. 14.)

On August 16, 2007, Vadas faxed Nationwide a letter stating that he was putting together a packet for the State because the State “may want to see something” and that the friable asbestos “profile may take several days to approve.” (Ex. 15.)

On approximately August 18, 2007, Asbestek began non-friable abatement at the Site. (Ex. 12 130:9 - 131:3.)

On August 23, 2007, eight days after discussing Asbestek’s need for an Ohio License with Amaya, Vadas faxed Nationwide a letter informing Collins, Nationwide’s owner, that he just learned that an Ohio License was required for friable asbestos abatement, even though he

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<sup>2</sup> The distinction between friable and non-friable is emphasized because Asbestek ultimately undertook the non-friable remediation weeks prior to the friable abatement, the latter which required an Ohio License.

was fully aware of this requirement prior to entering into the contract. (Ex. 16; Ex. 11, 133:1 - 136: 23.) Vadas further advised Nationwide that had Asbestek known better, Asbestek would have applied for its Ohio License at the time it “registered” with the Ohio Secretary of State (“Secretary of State”). In fact, Asbestek’s did not register with the Secretary of State until September 25, 2007, which was after Asbestek completed its friable asbestos abatement efforts at the Site. (Ex. 17.)<sup>3</sup> Vadas assured Nationwide that the non-friable asbestos removal, which was currently underway, would be completed on this date of August 23, 2007. (Ex. 16.)

On August 24, 2007, Vadas faxed Nationwide an invoice for non-friable asbestos abatement. He claimed that Asbestek was now registered with the Secretary of State, which was false. Vadas wrote that Asbestek’s Ohio License application was submitted, but that there may be a two to three week delay in receiving it. Vadas knew that no Ohio License application had ever been submitted to ODH. (Ex. 11, 130:19-131:4.; 187:11-188:6.) Vadas further stated that Asbestek was looking into working with a “business associate” who had an Ohio License, which would obviate the two or three week delay in being approved by the State of Ohio. (Ex. 18.) No such request for “approval” had ever been submitted to the State of Ohio.

On August 31, 2007, at 10:39 a.m., Vadas faxed Nationwide a letter stating that Asbestek will be “using” Petitioner’s Ohio License. He also stated that the original Notification Form would be sent to ODH on this date. (Ex. 19.)

Also on August 31, 2007, at 10:39 a.m., **after** advising Nationwide that Asbestek would be using Petitioner’s Ohio License, Vadas faxed the Ohio Environmental Protection Agency

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<sup>3</sup> Amaya did not prepare Asbestek’s registration application to the Ohio Secretary of State until a month later, on September 20, 2007, and immediately prior to Asbestek’s friable asbestos abatement efforts at the Site. Notably, this registration application coincides with Vadas’ eleventh hour, fourth revised Notification Form to ODH, the significance of which is discussed *infra*, in Section V.B.2.c.

("Ohio EPA") the EPA Notification Form<sup>4</sup> and identified the Contractor as "Asbestek" with an Ohio License "pending in Ohio." (Ex. 20.) He did not advise the Ohio EPA about any relationship with Petitioner. Asbestek never submitted a revised Notification Form to the Ohio EPA despite multiple revised Notification Forms that were subsequently submitted to ODH.

Also on August 31, 2007, Vadas obtained a money order for sixty-five dollars (\$65.00) from Harris Bank and had the teller list the remitter as "Safe Environment [*sic*] Corp."<sup>5</sup> (Ex. 21.) Petitioner did not authorize or cover the cost of this remittance.

Also on August 31, 2007, Vadas prepared (but did not file) an ODH Notification Form on his computer identifying the contractor as "Safe Environment [*sic*] Corp. of Indiana" with Petitioner's phone number and the contact person as Petitioner's then president Anthony Paganelli ("Paganelli"). Vadas identified the "Name of person filing this notice" as Paganelli. Vadas left the Abatement Specialist ("Specialist")<sup>6</sup> information blank. (Ex. 22.) This Notification Form was never submitted to ODH.

Also on August 31, 2007, Vadas edited Exhibit 22 by removing "Anthony Paganelli" as Petitioner's contact person and by adding his own name, "John Vadas," and by identifying the contact phone number for Safe Environmental as Vadas' own cell phone number. He added the Specialist as "Carlos Bonilla" ("Bonilla"). He changed the "Name of person filing this notice" to

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<sup>4</sup> Like ODH, the Ohio EPA requires a Notification Form to be submitted pursuant to Ohio Administrative Code § 3745-20-03 at least ten working days prior to removal or disturbance of asbestos containing material.

<sup>5</sup> On all of his documentation, including Notification Forms, bank money orders, spurious envelopes, and communications, Vadas erroneously refers to Save Environmental as "Safe Environment" including in his attempts to use it formally, such as in "Safe 'Environment' Corp. of Indiana."

<sup>6</sup> In Ohio, a Specialist is required to oversee an asbestos abatement action. A Specialist requires an Ohio "Supervisor License." The terms are synonymous, and in deposition testimony are used interchangeably. Petitioner submits, and both Vadas and Amaya agree, that Bonilla was listed as the Specialist using Bonilla's Ohio Supervisor License on the Notification Form even though Bonilla was unrelated to the abatement at the Site and Amaya and Vadas had no plans for him to be present.