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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)

Coldfoot Environmental)
Services, Inc.,)

Respondent.)
_____)

DOCKET NO. CAA-10-2009-0214

CONSENT AGREEMENT AND
FINAL ORDER

I. AUTHORITIES

1.1. This Consent Agreement and Final Order (CAFO) is issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). The Administrator has delegated the authority to issue the Final Order contained in Part V of the CAFO to the Regional Administrator, who in turn has redelegated this authority to the Regional Judicial Officer.

1.2. In accordance with Section 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA (Complainant) hereby issues, and Coldfoot Environmental Services, Inc. (Respondent) hereby agrees to the issuance of, the Final Order contained in Part V of this CAFO.

1.3. Section 112 of the CAA, 42 U.S.C. § 7412, requires the Administrator to promulgate regulations establishing emission standards or work practice standards for listed hazardous air pollutants, including asbestos. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (NESHAP).

1.4. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated regulations that govern the emissions, handling, and disposal of asbestos. These asbestos NESHAP regulations are found at 40 C.F.R. Part 61, Subpart M (Asbestos NESHAP).

1.5. Under 40 C.F.R. § 61.145, each owner or operator of a demolition or renovation activity, as defined at 40 C.F.R. § 61.141, must comply with certain notification and work practice standards applicable to demolition and renovation activities. The purpose of these requirements is to limit or prevent emissions of the hazardous air pollutant asbestos during demolition and renovation activities.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.34(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order in Part V of this CAFO becomes effective.

2.2. A statement of the factual basis for the alleged violations of the CAA, together with specific references to the provisions of the CAA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1 Respondent is a privately-held corporation organized under the laws of Alaska with its principal place of business located at 6670 Wes Way, Anchorage, Alaska, and engaged in the business of asbestos abatement and removal, demolition, and renovation. Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.2 The Harborview Hospital and Public Warehouse #2, located in Valdez, Alaska, and the Subport Building, located in Juneau, Alaska, are each a "facility" as defined at 40 C.F.R. § 61.141.

3.3 Each of these three facilities contained at least 260 linear feet or at least 160 square feet of "Category I or Category II nonfriable asbestos-containing material" or "regulated asbestos-containing material" as these terms are defined at 40 C.F.R. § 61.141.

3.4 Respondent conducted "demolition" activities at each of the three facilities and was the "owner or operator of a demolition or renovation activity" as these terms are defined at 40 C.F.R. § 61.141.

Harborview Hospital Demolition Operation

3.5 On or about April 24, 2007, Respondent mailed Complainant written notice of intention to demolish the Harborview Hospital in Valdez, Alaska. Respondent revised the original notice with a subsequent written notice mailed on or about May 4, 2007. This final revised notice listed July 8, 2007 as the scheduled demolition start date, and October 15, 2007 as the scheduled demolition completion date.

3.6 Respondent commenced demolition activities at the Harborview Hospital on June 27, 2007, and completed the demolition on September 6, 2007.

3.7 A hazardous materials pre-demolition survey prepared for Harborview Hospital identified, among other materials, 75,000 square feet of asbestos-containing debris present in the crawl space. Respondent's written notice submitted to Complainant for the Harborview Hospital demolition identified 2,300 linear feet of friable asbestos piping, 865 square feet of friable asbestos surface area, and 48,400 square feet of nonfriable Category II asbestos.

3.8 Respondent removed material from the crawl space at the Harborview Hospital and disposed of this material as asbestos-containing waste material.

Public Warehouse #2 Demolition Operation

3.9. On or about April 30, 2007, Respondent mailed Complainant written notice of intention to demolish the Public Warehouse #2 in Valdez, Alaska. Respondent revised the original notice with a subsequent written notice mailed to EPA on or about May 4, 2007. This final revised notice listed May 15, 2007 as the scheduled demolition start date, and October 15, 2007 as the scheduled demolition completion date.

3.10 Respondent commenced demolition activities at the Public Warehouse #2 on May 23, 2007, and completed the demolition on June 22, 2007.

Subport Demolition Operation

3.11. On or about September 13, 2007, Respondent mailed EPA a written notice of intention to demolish the Subport Building in Juneau, Alaska. Respondent revised the original notice with a subsequent written notice mailed on or about March 31, 2008. This final revised notice listed April 14, 2008 as the demolition start date, and May 31, 2008 as the demolition completion date.

3.12. Respondent commenced demolition activities at the Subport Building on April 16, 2008, and completed the demolition on May 31, 2008.

Alleged Violations

3.13. Complainant alleges that Respondent:

(a) failed to update the written notice of intention to demolish the Harborview Hospital to include 75,000 square feet of asbestos-containing debris in the crawl space which increased the amount of asbestos affected by the demolition operation by more than 20% in violation of 40 C.F.R. § 61.145(b)(2);

(b) failed to update the written notice of intention to demolish the Harborview Hospital before commencing demolition activities on a date earlier than stated in the last revised notice in violation of 40 C.F.R. § 61.145(b)(3)(iv)(B);

(c) failed to update the written notice of intention to demolish the Public Warehouse #2 before commencing demolition activities after the date stated in the last revised notice in violation of 40 C.F.R. § 61.145(b)(3)(iv)(A);

(d) failed to update the written notice of intention to demolish the Support Building before commencing demolition activities after the date stated in the last revised notice in violation of 40 C.F.R. § 61.145(b)(3)(iv)(A).

VI. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any right to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.10, below, each party shall bear its own costs in bringing or defending this action.

4.6. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), Complainant has determined, and Respondent agrees, that an appropriate penalty to settle this action is FIVE THOUSAND ONE HUNDRED DOLLARS (\$5,100). This penalty amount is agreed upon after

consideration of the statutory penalty criteria identified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and EPA's CAA Stationary Source Penalty Policy, and in consideration of the Supplemental Environmental Project ("SEP") described in Section 4.12 and the attached Appendix.

4.7. Respondent consents to issuance of the Final Order recited herein and to payment of the civil penalty cited in the foregoing paragraph within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to the "Treasurer, United States of America." The check or money order shall reference on its face the title of the case and the docket number of this CAFO. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by UPS, Federal Express, or overnight mail, the payment shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
Phone: (314) 418-1028

4.9. A photocopy of the check or money order or other proof of payment submitted in fulfillment of the penalty payment requirements of this order shall be sent to the Regional Hearing Clerk and Complainant at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Mail Stop ORC – 158
Seattle, Washington 98101

Mr. John Pavitt
U.S. Environmental Protection Agency
222 West 7th Avenue, #19
Anchorage, Alaska 99513

4.10. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.11. Should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

(a) Interest. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any unpaid portion of the assessed penalty shall bear interest at the rate established by 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

(b) Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay (in addition to any assessed penalty and interest), attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

4.12. Respondent shall implement a SEP in accordance with the Appendix to this Consent Agreement, which is attached hereto and incorporated into this Consent Agreement by reference. Respondent agrees that the SEP advances the CAA's objective of reducing hazardous air pollution, and is intended to reduce the amount of asbestos released to the environment and the overall risk to public health. Respondent further agrees that the SEP shall be completed no later than March 31, 2010.

4.13. In conducting the SEP, which is described in more detail in the Appendix, Respondent agrees to abate, remove, and properly dispose of approximately 225 linear feet of friable asbestos pipe insulation present at the Out North facility in Anchorage, Alaska. When conducting the abatement at the Out North facility, Respondent shall follow the asbestos NESHAP notice, work practice, and disposal procedures and requirements applicable to renovation operations that involve a combined amount of regulated asbestos-containing material on pipes that is greater than 80 linear meters (260 linear feet).

4.14. Respondent's deadline to perform the SEP shall be excused or extended if such performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control of Respondent, including its employees, agents, consultants, and contractors, which could not be

overcome by due diligence and which delays or prevents the performance of the SEP within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits.

4.15. The cost to Respondent of implementing the SEP shall be not less than FOURTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$14,800). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report required by Paragraph 4.17.

4.16. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, under a grant, or as injunctive relief in any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. For Federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

4.17. Respondent shall submit a SEP Completion Report to EPA no later than April 30, 2010. The SEP Completion Report shall contain the following information:

- (a) A detailed description of the SEP as implemented;
- (b) Itemized costs, documented by copies of receipts or canceled checks;
- (c) Waste shipment or disposal records;
- (d) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;
- (e) A description of any problems encountered and the solutions thereto; and
- (f) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the total quantity of asbestos and asbestos-containing waste material removed and disposed).

4.18. Respondent agrees that failure to submit the SEP Completion Report required by Paragraph 4.17, above, shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to this CAFO.

4.19. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports required by this CAFO by first class mail to:

Mr. John Pavitt
U.S. Environmental Protection Agency
222 West 7th Avenue, #19
Anchorage, Alaska 99513

4.20. Respondent agrees that Complainant may inspect the SEP asbestos abatement operation and records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.21. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to Complainant pursuant to this CAFO until the SEP Completion Report is accepted pursuant to Paragraph 4.22, below, and Respondent shall provide such documentation to EPA within 15 days of a written request for such information. In all

documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this CAFO, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

"I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

4.22. Within 45 days of receipt of the SEP Completion Report described in Paragraph 4.17, above, Complainant may do one of the following: (a) accept the Report; (b) reject the Report, notify the Respondent in writing of deficiencies in the Report, and grant Respondent an additional 30 days in which to correct any deficiencies; or (c) reject the Report and seek stipulated penalties in accordance with Paragraph 4.24, below. If Complainant does not act within 45 days after receiving the SEP Completion Report, the Report will be deemed accepted, and the SEP will be considered satisfactorily completed.

4.23. In the event the SEP is not completed as contemplated by this CAFO and this failure was not caused solely by events which constitute a Force Majeure as defined by Paragraph 4.14, above, then stipulated penalties shall be due and payable by Respondent to Complainant in accordance with Paragraph 4.24, below. Schedules herein may be extended based upon mutual written agreement of the parties.

4.24. In the event that Respondent fails to substantially comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in the preceding paragraphs and the Appendix, and/or to the extent that the actual expenditures for the SEP do not

equal or exceed \$14,800, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (a) In all cases, if Respondent spent less than \$14,800, Respondent shall pay a stipulated penalty equal to the difference between the amount of the actual expenditures for the SEP incurred by the Respondent, and \$14,800;
- (b) If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000) in addition to the penalty required under subparagraph (a), above;
- (c) If the SEP is not completed in accordance with the completion date specified in Paragraph 4.12, above, or if Respondent does not submit a SEP Completion Report by the deadline specified in Paragraph 4.17, above, Respondent shall pay stipulated penalties as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100.00	1 st through 14 th day
\$200.00	15 th through 30 th day
\$500.00	31 st day and beyond

4.25. The determinations of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of Complainant. A determination that the SEP has been satisfactorily completed shall not be unreasonably withheld. Complainant's determination that the SEP has been satisfactorily completed shall be based on a comparison of the requirements contained in this CAFO (including the attached Appendix) and the actions performed by Respondent to complete the SEP.

4.26. Stipulated penalties under Paragraph 4.24, above, shall begin to accrue on the day

after performance is due, and shall continue to accrue through the final day of satisfactory completion of the activity.

4.27. Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by Complainant for such penalties. Payment shall be in accordance with the provisions of Paragraph 4.8, above. Interest and late charges shall be paid as stated in Paragraph 4.11, above.

4.28. Except as provided in Paragraph 4.32, below, nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of Complainant to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4.29. Any public statement, oral or written, in print, film, or other media made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act."

4.30. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law.

4.31. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

4.32. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III above. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA and it is the

Respondent's responsibility to comply with all laws.

STIPULATED AND AGREED:

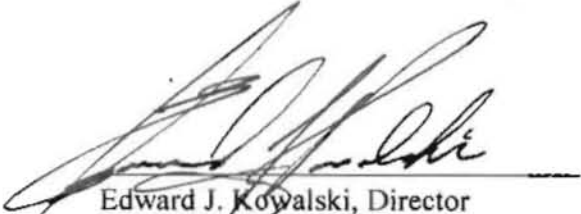
FOR RESPONDENT COLDFOOT ENVIRONMENTAL SERVICES, INC.



Cuauhtémoc Rodríguez-Villegas
President
Coldfoot Environmental Services, Inc.

Dated: 8/24/09

FOR COMPLAINANT



Edward J. Kowalski, Director
Office of Compliance and Enforcement
U.S. EPA Region 10

Dated: 8/26/09

V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by Complainant of all claims for civil penalties pursuant to the Clean Air Act for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations and permits issued thereunder.

5.3 Respondent shall pay a civil penalty of FIVE THOUSAND ONE HUNDRED DOLLARS (\$5,100) as provided in Paragraph 4.6 above, and complete the SEP described in Paragraphs 4.12 and 4.13 or pay penalties as provided in Paragraph 4.24 above.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 4th day of September, 2009.



Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency Region 10

Appendix to
In the Matter of Coldfoot Environmental Services
EPA Docket No. CAA-10-2009-0214
Supplemental Environmental Project ("SEP")

Project: Asbestos Abatement at VSA Arts of Alaska Out North (Out North)

Total Project Cost: \$14,800

Project Location: Out North 3800 Debarr Road, Anchorage, Alaska 99508-2011

Project Description:

Out North is a not-for-profit multi-disciplinary arts organization that supports disenfranchised community members through live performances, visual art, music, and film. Out North's core audience is Alaska Natives, Latinos, and Hmong people. The organization is currently arranging outreach activities with the National Urban League, a media program for Alaska Native youth, Alaska Native Heritage Center and Alaska Literacy Program. Out North is also the Alaska affiliate of the VSA arts program which offers opportunities for artists with disabilities.

Due to funding issues, Out North has been unable to abate asbestos discovered in its facility. Coldfoot Environmental Services, Inc. will abate, remove and dispose of an estimated 225 linear feet of asbestos pipe insulation in the mechanical room, crawlspace and basement. This work will be conducted in full compliance with the requirements of the asbestos NESHAP. The regulatory threshold for applicability of the asbestos NESHAP is 260 linear feet. Consequently, absent this SEP, the asbestos-containing material present in the facility might otherwise not be abated, removed, or disposed in a manner consistent with the NESHAP.

Total SEP Costs \$14,800

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Coldfoot Environmental Services, Inc.**, **DOCKET NO.: CAA-10-2009-0214** was filed with the Regional Hearing Clerk on September 4, 2009.

On September 4, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

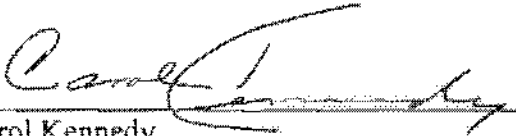
Alex Fidis, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on September 4, 2009, to:

Mr. Cuauthemoc Rodriguez-Villegas
Coldfoot Environmental Services, Inc.
6670 Wes Way
Anchorage, AK 99518-1575

Mr. William Choquette
Choquette & Farleigh, LLC
629 L Street
Suite 101
Anchorage, AK 99501

DATED this 4th day of September 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10