



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2009 NOV -3 AM 10:19

EPA REGION VIII
PEARSON STERR

DOCKET NO.: CAA-08-2010-0002

IN THE MATTER OF:)

SWANK ENTERPRISES, INC.)

P. O. Box 568)

Valier, MT 59486)

RESPONDENT)

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 3rd DAY OF November, 2009.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

Swank Enterprises, Inc.
P.O. Box 568
Valier, MT 59486

Respondent.

COMPLAINT AND
CONSENT AGREEMENT
(SIMULTANEOUS AND COMBINED)

DOCKET NO.: CAA-08-2010-0002

COMPLAINT

GENERAL ALLEGATIONS

1. This civil administrative enforcement proceeding is authorized by Congress in the Clean Air Act (CAA), and issued pursuant to section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), for violation of regulations which implement the requirements of Subchapter I, part A, of the CAA, 42 U.S.C. § 7412 (control of "Hazardous Air Pollutants"). The Environmental Protection Agency (EPA) promulgated regulations, by authority of the CAA, to implement this control requirement. These regulations are set out in part 61 (*National Emissions Standards for Hazardous Air Pollutants*), subpart M (*National Emission Standard for Asbestos*) of title 40 of the Code of Federal Regulations (C.F.R.), 40 C.F.R. § 61.140 et seq.

2. This proceeding is subject to applicable procedural rules. 40 C.F.R. part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (rules of practice)). This COMPLAINT AND CONSENT AGREEMENT (SIMULTANEOUS AND COMBINED) is authorized by the rules of practice. 40 C.F.R. § 22.13(b).

3. The undersigned EPA officials have been properly delegated the authority to initiate and conclude this proceeding.

4. Respondent is Swank Enterprises, Inc., a Montana corporation formed on May 20, 1968, and currently in good standing with the Montana Secretary of State's Office.

5. At all times relevant to this proceeding, Respondent is a "person" as defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e), and thus subject to regulation.

6. At all times relevant to this proceeding, Respondent was an operator of a demolition or renovation activity and thus subject to the *National Emission Standard for Asbestos* (Asbestos Standard.) 40 C.F.R. § 61.140 et seq.

7. All operators subject to the Asbestos Standard who engage in demolition or renovation activities, or both, are required to thoroughly inspect the facility where the demolition or renovation activity will occur for the presence of asbestos, including regulated asbestos containing materials, prior to engaging in such activity. 40 C.F.R. § 61.145.

8. On or about February, 2008, EPA obtained information regarding Respondent's demolition and renovation activities involving the Vans IGA Store in Browning, Montana, and occurring in 2007. Review of this and additional information indicated Respondent, an operator subject to the Asbestos Standard, failed to thoroughly inspect the affected facility for the presence of asbestos, including regulated asbestos containing materials, prior to commencing renovation or demolition activities at this store.

FINDING OF VIOLATION

(Failure of an operator to thoroughly inspect an affected facility for the presence of asbestos, including regulated asbestos containing materials, prior to conducting demolition or renovation activities. 40 C.F.R. § 61.145(a))

9. Paragraphs 1 - 8 of the GENERAL ALLEGATIONS are incorporated by this reference and set out as if fully stated herein.

10. Respondent failed to thoroughly inspect for the presence of asbestos, including regulated asbestos containing materials, at the Vans IGA Store in Browning, Montana, prior to conducting demolition or renovation activities, for the time period occurring on or about 2007, as required by 40 C.F.R. § 61.145(a).

CONSENT AGREEMENT

11. Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations stated above.

12. Respondent waives his/her right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Complaint and Consent Agreement.

13. This Complaint and Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Complaint and Consent Agreement contains all terms of the settlement agreed to by the parties.

14. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19, authorize the assessment of a civil penalty of up to \$32,500 per day of violation for each violation of the implementing regulations associated with the requirements of Subchapter I, part A, of the CAA, 42 U.S.C. § 7412. For purposes of determining the amount of any civil penalty to be assessed, Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires EPA to take into account, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

15. Based on the factors listed in paragraph 14, Respondent's acknowledgement that it is in full compliance with the requirements of CAA, EPA has determined that an appropriate civil penalty to settle this action is **FIVE THOUSAND DOLLARS (\$5,000.00)**.

16. Respondent consents, for the purpose of settlement, to the issuance of a final order in this matter and agrees to pay the civil penalty cited in the foregoing paragraph. Respondent further consents, for the purpose of settlement, to pay the civil penalty as follows:

- a. Payment is due within 30 calendar days from the date written on a Final Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. If the due date falls on a weekend or legal Federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
- b. The payment shall be made by remitting a cashier's or certified check, **including the name and docket number of this case**, for the amount, payable to "*Treasurer, United States of America*," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22-checking
Environmental Protection Agency
Account 310006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter sf01.1 in the search field
Open form and complete required fields

A copy of the check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent to both:

Mr. Daniel Webster, 8ENF-AT
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

Ms. Tina Artemis, 8RC
Regional Hearing Clerk
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the final order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 60 days of the due date (that is, the 120th day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

17. Nothing in this Complaint and Consent Agreement shall relieve Respondent of the duty to comply with the Clean Air Act and its implementing regulations.

18. Failure by Respondent to comply with any term of this Complaint and Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and such other relief as may be appropriate.

19. Nothing in this Complaint and Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Complaint and Consent Agreement.

20. If the undersigned is a representative of the Respondent, he/she certifies that he/she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement and to bind the parties he/she represents to the terms and conditions of this Complaint and Consent Agreement.

21. The parties agree to submit this Complaint and Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

22. Each party shall bear its own costs and attorney fees in connection with this matter.

23. This Complaint and Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the complaint portion of this Complaint and Consent Agreement.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Office of Enforcement, Compliance, and
Environmental Justice, Complainant.

Date: 10/27/09 By: Cynthia J. Reynolds
Cynthia J. Reynolds, Director
Technical Enforcement Program
U.S. EPA Region 8

Date: 10/27/09 By: Michael T. Risner
Michael Risner, Director
Legal Enforcement Program

Date: 10/26/2009 By: Dana Stotsky
Dana Stotsky
Senior Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8

In the Matter of: SWANK ENTERPRISES, INC.

SWANK ENTERPRISES, INC.
Respondent.

Date: 10-13-2009 By: Derek Swank

Printed Name: Derek Swank

Title: Executive Vice President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT, CONSENT AGREEMENT/FINAL ORDER (SIMULTANEOUS AND COMBINED)** in the matter of **SWANK ENTERPRISES, INC.; DOCKET NO.: CAA-08-210-0002** was filed with the Regional Hearing Clerk on November 3, 2009.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Dana Stotsky, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on November 3, 2009, to:

Derek Swank, Executive Vice President
Swank Enterprises, Inc.
P. O. Box 568
Valier, MT 59486

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

November 3, 2009


Tina Artemis
Paralegal/Regional Hearing Clerk

