

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Alt/Chem Environmental Services, Inc.
&
Owens Corning, Inc.,

Respondents

In a proceeding under § 113(d) of the
Clean Air Act

CONSENT AGREEMENT
AND
FINAL ORDER

CAA 02-2009-1229

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 OCT 22 A 9:27
REGIONAL HEARING
OFFICE

PRELIMINARY STATEMENT

On September 24, 2009, the U.S. Environmental Protection Agency (EPA) issued an administrative "Complaint and Notice of Opportunity for Hearing" (Complaint), CAA 02-2009-1229, to Alt/Chem Environmental Services, Inc. (Respondent Alt/Chem) and Owens Corning, Inc. (Respondent Owens). The Complaint alleged violations of the Clean Air Act, 42 U.S.C. § 7401, et seq. (the CAA or Act), 42 U.S.C. §§ 7412 and 7414, Sections 112 and 114 of the Act, and proposed penalties, pursuant to Section 113(d), of the Act. The Complainant in this matter, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2, is duly delegated the authority to issue Complaints and Consent Agreements on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands. The Regional Judicial Officer is duly delegated the authority as Presiding Officer to execute Final Orders in settlements of administrative actions where the settlement does not require a civil penalty greater than \$37,500, and does not include a supplemental environmental project or injunctive relief.

Section 112 of the Act authorizes the EPA Administrator to issue and require compliance with emission and/or work practice standards for hazardous air pollutants (HAPs). Section 114(a)(1) of the Act authorizes the EPA Administrator to require owners or operators of emission sources to submit specific information regarding facilities, establish and maintain records, make reports, sample emission points, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act. Pursuant to Sections 112 and 114 of the Act, the Administrator promulgated 40 C.F.R. Part 61, Subpart M, entitled "National Emission Standard for Asbestos" (Asbestos NESHAP).

Complainant and Respondents have agreed to resolve the Complaint by entering into this Consent Agreement.

FINDINGS OF FACT and CONCLUSIONS OF LAW

1. Each of the Respondents is a "person," as that term is defined in 42 U.S.C. § 7602(e), Section 302(e) of the Act, and as such are subject to the assessment of administrative penalties under Section 113(d) of the Act.
2. At all times relevant to this proceeding, Respondents were either the "owner or operator of a renovation or demolition activity," as those terms are defined at 40 C.F.R. §§ 61.02 and 61.141 and are therefore subject to the Asbestos NESHAP.
3. Pursuant to 40 C.F.R. § 61,145(c)(1) and (c)(6)(i), and 40 C.F.R. § 61.150(a)(iii) of the Asbestos NESHAP, Respondents are required to remove all regulated asbestos containing material (RACM) prior to demolition, maintain RACM in a wet condition until collected and contained for disposal and seal all RACM in leak tight containers while still adequately wet.
4. The Complaint alleged that on February 25, 2009, the first day of a New Jersey Department of Health and Senior Services (NJDHSS) inspection, Respondents violated 40 C.F.R. § 61.145(c)(1) and (c)(6)(i) and 40 C.F.R. § 61.150(a)(iii), by failing to remove all asbestos containing material prior to demolition, by failing to ensure that RACM remained wet until collected and contained for disposal and by failing to seal all RACM in leak tight containers while wet.
5. The Complaint further alleged that on February 26, 2009, the second day of the NJDHSS inspection, Respondents violated 40 C.F.R. § 61.145(c)(6)(i) and 40 C.F.R. § 61.150(a)(iii), by failing to ensure that RACM remained wet until collected and contained for disposal and by failing to seal all RACM in leak tight containers while wet.
6. Subsequent to the filing of the Complaint, Settlement discussions resulted in a determination that no violations occurred on February 25, the first day of the NJDHSS inspection, and that only the violation of 40 C.F.R. § 61.145(c)(6)(i), the requirement to ensure that the RACM remained wet, occurred on February 26, the second day of the inspection.
7. Respondents' failure to ensure that the RACM remained wet until collected and contained for disposal is a violation of the Asbestos NESHAP and Section 112 of the Act.

CONSENT AGREEMENT

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

8. For the purpose of this proceeding, only, and to avoid the expense of protracted litigation, Respondents: (1) admit to the jurisdictional allegations of the Complaint; (2) neither admit nor deny specific factual allegations contained in the Complaint and in this Consent Agreement; and (3) consent to the assessment of the civil penalties stated herein.

9. Respondent Alt/Chem shall pay, pursuant to Section 113(d) of the Act, a civil penalty in the amount of fourteen thousand eight hundred seventy five dollars (\$14,875.00). Respondent Alt/Chem shall pay by cashiers' or certified check. The payment is due within thirty (30) days of issuance of the attached Final Order (due date). Respondent Alt/Chem shall: (1) clearly type or write the docket number on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer of the United States of America;" and (3) send the check to:

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

10. Respondent Alt/Chem shall send notice of payment, along with a copy of the check to:

John F. Dolinar
Assistant Regional Counsel
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

11. Failure to remit the penalty in full in accordance with the above provisions may result in referral of this matter to the United States Attorney for collection. In such an action, pursuant to Section 113(d)(5) of the Clean Air Act, and 31 U.S.C. §§ 3717 and 3731, Respondent Alt/Chem shall pay the following amounts:

- i. Interest. If Respondent Alt/Chem fails to make payment, any unpaid installment portion of the assessed penalty shall bear interest, at the rate established pursuant to Section 113(d)(5) and 31 U.S.C. § 3731, from the payment due date specified in this Consent Agreement.
- ii. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars \$15.00 will be assessed for each thirty (30) day period (or portion thereof) following the due date in which any payment remains unpaid.
- iii. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent Alt/Chem fails to pay the amount of an assessed penalty on time, pursuant to

Section 112 (d)(5) of the Act, in addition to such assessed penalty, interest and handling charges, Respondent Alt/Chem shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment of penalty shall be ten percent of the aggregate amount of Respondent Alt/Chem's' outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

12. This Consent Agreement is being entered into voluntarily and knowingly by the undersigned parties in full settlement of all enumerated civil liabilities that might have attached as a result of Respondents' alleged failure to comply with the Asbestos NESHAP.

13. Respondents have read the Consent Agreement, find it reasonable, and consent to its terms and issuance as a Final Order.

14. This Consent Agreement and attached Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Air Act for violations alleged in the Complaint. Nothing in this Consent Agreement and attached Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents, or to affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Compliance with this Consent Agreement and attached 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 responsibility of the Respondents to comply with such laws and regulations.

15. Respondents explicitly waive their rights to request a hearing on the Complaint, this Consent Agreement, and/or the attached Final Order and explicitly waive their rights to contest allegations in the Complaint and their rights to appeal the attached Final Order.

16. Respondents waive any rights they may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum addressed to, the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

17. Each party to this agreement shall bear the responsibility for its own costs and attorney fees in the procedure resolved by this Consent Agreement and attached Final Order.

18. This Consent Agreement and attached Final Order shall be binding on all parties to this action, and upon their officers, directors, employees, successors, and assigns.

19. Each of the undersigned representative(s) certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and to bind that party to it.

FOR RESPONDENTS

Alt/Chem Environmental Services, Inc.

Owens Corning, Inc.



DATE: 4/19/2010

DATE: _____

18. This Consent Agreement and attached Final Order shall be binding on all parties to this action, and upon their officers, directors, employees, successors, and assigns.

19. Each of the undersigned representative(s) certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and to bind that party to it.

FOR RESPONDENTS

Alt/Chem Environmental Services, Inc.

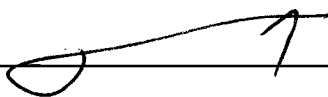
Owens Corning, Inc.

DATE: _____

Paul A. Lewandowski
DATE: 4/15/2010

FOR COMPLAINANT

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S Environmental Protection Agency, Region 2



DATE: APRIL 22, 2010

FINAL ORDER

The Region 2 Judicial Officer concurs in the foregoing Consent Agreement:
Alt/Chem Environmental Services, Inc. & Owens Corning, Inc., CAA 02-2009-1229.
The Consent Agreement, entered into by the parties, is hereby approved and issued, as
a Final Order, effective immediately.

DATE May 10, 2010



Helen S. Ferrara
Judicial Officer
U.S. Environmental Protection Agency
Region 2