

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. CAA-10-2021-0058
IDAHO TRANSPORTATION)
DEPARTMENT,) CONSENT AGREEMENT
DISTRICT 6, BUILDING #6108)
Rigby, Idaho)
)
Respondent.

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under 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).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Idaho Transportation Department (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA has promulgated national emission standards for hazardous air pollutants, including standards for asbestos. These standards are codified at 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos (“Subpart M”).

3.2. Subpart M includes standards that apply to the owner or operator of a demolition or renovation activity. 40 C.F.R. § 61.145.

3.3. “Owner or operator of a demolition or renovation activity” means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both. 40 C.F.R. § 61.141.

3.4. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” as including a state and a political subdivision of a state.

3.5. “Renovation” means altering a facility or one or more facility components in any way, including the stripping or removal of regulated asbestos-containing material from a facility component. 40 C.F.R. § 61.141.

3.6. “Facility” includes any institutional, commercial, public, industrial, or residential structure, installation, or building, subject to exclusions not relevant here. 40 C.F.R. § 61.141.

3.7. “Facility component” means any part of a facility including equipment. 40 C.F.R. § 61.141.

3.8. “Regulated asbestos-containing material” (RACM) means (a) Friable asbestos material, (b) Category I nonfriable asbestos-containing material that has become friable, (c) Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by Subpart M. 40 C.F.R. § 61.141.

3.9. “Strip” means to take off RACM from any part of a facility or facility components. 40 C.F.R. § 61.141.

3.10. “Remove” means to take out RACM or facility components that contain or are covered with RACM from any facility. 40 C.F.R. § 61.141.

3.11. “Leak-tight” means that solids or liquids cannot escape or spill out, and also means dust-tight. 40 C.F.R. § 61.141.

3.12. “Asbestos-containing waste materials” means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of Subpart

M. The term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, the term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing. 40 C.F.R. § 61.141.

3.13. Respondent is a political subdivision of the State of Idaho and therefore is a “person” as defined in CAA Section 302(e), 42 U.S.C. § 7602(e).

3.14. On or about April 7, 2020, Respondent removed approximately 200 square feet of asbestos-containing floor tile from the Idaho Transportation Department District 6, Building # 6108 in Rigby, Idaho (“Facility”).

3.15. The Facility is a “facility” as defined in 40 C.F.R. § 61.141.

3.16. Respondent removed the asbestos-containing floor tile from the Facility with a pneumatic tool that shattered and crumbled floor tile in the process.

3.17. Testing showed that the asbestos-containing floor tile contained 2% Chrysotile asbestos.

3.18. The asbestos-containing floor tile became friable through the removal process and is “RACM” under Subpart M.

3.19. The removal of RACM from the Facility on or about April 7, 2020 constitutes a “renovation” under Subpart M.

3.20. Respondent is the owner of the Facility and operated, controlled, or supervised the renovation at the Facility on or about April 7, 2020, making Respondent the “owner” and “operator” of the renovation under Subpart M.

3.21. The asbestos-containing floor tile removed from the Facility on April 7, 2020 is “asbestos-containing waste material” under Subpart M.

COUNT 1

3.22. 40 C.F.R. §§ 61.145(a) requires the owner or operator of a demolition or renovation activity to thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos prior to the commencement of the demolition or renovation.

3.23. The Respondent did not thoroughly inspect the Facility for the presence of asbestos and did not test the floor tile for asbestos prior to removing the floor tile on April 7, 2020.

3.24. Respondent therefore violated 40 C.F.R. §§ 61.145(a) by failing to thoroughly inspect the part of the Facility where the renovation occurred for the presence of asbestos prior to the commencement of the renovation.

COUNT 2

3.25. 40 C.F.R. §§ 61.145(a)(4) and 61.145(b)(3)(i) require the owner or operator of a subject renovation activity to provide EPA with written notice of intention to renovate at least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the combined amount of RACM on facility components other than pipes to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is at least 15 square meters (160 square feet).

3.26. Respondent did not submit a written notice or any other notice to EPA prior to removing approximately 200 square feet of RACM from facility components at the Facility on April 7, 2020.

3.27. Respondent therefore violated 40 C.F.R. § 61.145(b)(3)(i) by failing to provide EPA written notice of its intent to renovate the Facility at least 10 working days before beginning the renovation operation.

COUNT 3

3.28. Under 40 C.F.R. § 61.145(c)(8), no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility subject to Subpart M unless at least one onsite representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of 40 C.F.R. § 61.145 and the means of complying with the regulation, is present.

3.29. No one who participated in the removal of asbestos-containing floor tile from the Facility on April 7, 2020 was trained in the provisions of 40 C.F.R. § 61.145.

3.30. Respondent therefore violated 40 C.F.R. § 61.145(c)(8) by failing to have at least one onsite representative trained in the provisions of 40 C.F.R. § 61.145 and the means of complying with the regulation present at the Facility on April 7, 2020 when the asbestos-containing floor tile was removed.

COUNT 4

3.31. Under 40 C.F.R. § 61.150(a), each owner or operator of a subject renovation shall discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting any of the asbestos-containing waste materials or shall use one of the emission control and waste treatment methods specified in 40 C.F.R. § 61.150(a)(1) through (4).

3.32. Under 40 C.F.R. § 61.150(a)(1), the owner or operator of a subject renovation may meet the requirements of 40 C.F.R. § 61.150(a) by adequately wetting the asbestos-containing waste material, taking the measures specified in 40 C.F.R. § 61.150(a)(1) and (a)(2), and sealing such material in leak-tight containers while wet or, for materials that will not fit into containers without additional breaking, putting materials into leak-tight wrapping, as provided in 40 C.F.R. § 61.150(a)(3).

3.33. Visible emissions were discharged to the outside air when Respondent transported the asbestos-containing waste material to and disposed of it in a dumpster outside the Facility.

3.34. The dumpster in which Respondent disposed of the asbestos-containing waste material was not a leak-tight container and the pieces of material were loose in the dumpster (that is, not in bags or other containers).

3.35. In addition to failing to use the emission control and waste treatment method specified in 40 C.F.R. § 61.150(a)(1), Respondent failed to use any of the other emission control and waste treatment methods specified in 40 C.F.R. § 61.150(a)(2) through (4).

3.36. Respondent therefore violated 40 C.F.R. § 61.150(a) by discharging visible emissions to the outside air during the collection, processing, packaging, or transporting asbestos-containing waste materials and failing to use one of the emission control and waste treatment methods specified in 40 C.F.R. § 61.150(a)(1) through (4).

ENFORCEMENT AUTHORITY

3.37. CAA Section 113(d), 42 U.S.C. § 7413(d), authorizes EPA to assess administrative penalties for violations of Subpart M.

3.38. Under CAA 113(d), 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of up to \$48,762 per day of violation.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). After considering

these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$61,250 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk U.S. Environmental Protection Agency Region 10, Mail Stop 11-C07 1200 Sixth Avenue, Suite 155 Seattle, Washington 98101 young.teresa@epa.gov	John Pavitt U.S. Environmental Protection Agency Region 10, Mail Stop 20-C04 1200 Sixth Avenue, Suite 155 Seattle, Washington 98101 Pavitt.john@epa.gov
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4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to

Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, 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 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' 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 penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

3/15/2021

FOR RESPONDENT:



DAN MCELHINNEY, Chief Operations Officer
Idaho Transportation Department

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. CAA-10-2021-0058
)
IDAHO TRANSPORTATION) **FINAL ORDER**
DEPARTMENT,)
DISTRICT 6, BUILDING #6108)
)
)
Rigby, Idaho)
Respondent.

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

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

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of March, 2021.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Idaho Transportation Department, Docket No.: CAA-10-2021-0058**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered by email to:

Julie Vergeront
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Vergeront.julie@epa.gov

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

J. Tim Thomas
Deputy Attorney General
Civil Litigation Division
Idaho Transportation Department
3311 W. State Street
P.O. Box 7129, Boise Idaho 83707-1129
tim.thomas@itd.idaho.gov

DATED this ____ day of March, 2021.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10